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Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1304th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 1 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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GE.99-40727 (E)

The meeting was called to order at 10.15 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fifty-fourth session of the Committee on the Elimination of Racial Discrimination. He welcomed Mr. Ferrero Costa's return to the Committee and indicated that Mrs. McDougall, being engaged in other tasks, had informed him that she would not be able to participate in the work before the second week of the session. Mr. Wolfrum, who had likewise been assigned to other tasks, would be returning to the Committee only at the August session. He welcomed Mr. Francisco Aguilar, the new Chief of the Support Services Branch. Before turning to the adoption of the agenda, he gave the floor to the Deputy High Commissioner for Human Rights.

STATEMENT BY THE DEPUTY HIGH COMMISSIONER FOR HUMAN RIGHTS

2. Mr. RAMCHARAN (Deputy High Commissioner for Human Rights) said that, having been in contact with the members of the Committee for 14 years, mainly in his capacity as a delegate to the Third Committee of the General Assembly in New York, and having long been a student and disciple of Professor van Boven for whom he had a profound admiration, he was particularly glad to have an opportunity to address the Committee on behalf of the High Commissioner for Human Rights, who had asked him to transmit her greetings and best wishes for success.

3. Since the end of the Second World War, the idea of incorporating the principle of non-discrimination in international law had made headway. That principle pervaded the text of the Charter of the United Nations and the Universal Declaration of Human Rights and, in General Comment No. XIV formulated during its forty-second session, the Committee had noted that "non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic principle in the protection of human rights". To determine the existence of discrimination, it was sufficient to see whether an action under scrutiny had an unjustifiable disparate impact upon a group distinguished by race, colour, descent or national or ethnic origin.

4. In a recent book on CERD and the International Convention on the Elimination of All Forms of Racial Discrimination, one of the distinguished members of the Committee had written that the effective implementation of a human rights instrument such as the International Convention on the Elimination of All Forms of Racial Discrimination depended on a triangular relationship between the States parties, the treaty body and members of the public within the States parties. The question was whether States were ready to discipline those among them who failed to discharge their obligations in that regard. At the dawn of the twenty-first century, the Committee on the Elimination of Racial Discrimination appeared as the custodian of the principle of equality and non-discrimination in the eyes of the public and of history and, in that respect, was sustaining the hopes of mankind.

5. In the early stages of the drafting of the Universal Declaration of Human Rights, Mr. Malik of Lebanon, who was one of the architects of that instrument, had emphasized the principle that the human person was more

important than the racial or national group to which he or she belonged. It was in that spirit that article 1 of the Universal Declaration of Human Rights proclaimed that all human beings were born free and equal in dignity and rights and should act towards one another in a spirit of brotherhood.

6. Several years later, Mr. Hernan Santa Cruz of Chile, who was one of the drafters of the Universal Declaration, had written in a study on racial discrimination, which he had undertaken for the United Nations, that the general principles relating to the elimination of racial discrimination had been clearly set forth in the Universal Declaration of Human Rights and in the International Convention on the Elimination of All Forms of Racial Discrimination and, therefore, recommendations needed to be formulated to ensure that racial discrimination was eliminated in the political sphere by all appropriate means, including legislation, and also in the economic and social spheres in which it constituted a major cause of inequality of opportunity. In that regard, he had pleaded in favour of continued cooperation between United Nations organs and the ILO in order to eliminate racial discrimination in the field of employment. He had also urged countries to adopt dynamic education policies guaranteeing access to education for all citizens as the surest way to eliminate de facto discrimination and, to that end, had called for cooperation between United Nations organs and UNESCO.

7. In General Comment No. XVII, formulated during its forty-second session, the Committee had recommended that States parties establish national commissions or other appropriate bodies to promote respect for the enjoyment of human rights without discrimination, to review government policies concerning protection against racial discrimination, to monitor legislative compliance with the provisions of the Convention, to educate the public about the obligations of States parties under the Convention and to assist the Government in the preparation of reports to be submitted to the Committee on the Elimination of Racial Discrimination.

8. In its decision 9/53 which it had adopted during the previous year concerning its contribution to the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Committee had indicated that the following issues might be included on the agenda of the Conference: the aftermath of slavery and colonialism; impact of economic globalization and racial inequality; treatment of migrants, refugees, asylum-seekers and displaced persons; prevention of racial discrimination, including early-warning and urgent procedures; prevention of racial discrimination through education; remedies; redress mechanisms and reparations for racial discrimination; international mechanisms for the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and their progressive development; efforts to combat statements inciting hatred and to promote tolerance in the computer era; and the implications of multiple identities (race, colour, descent, national or ethnic origin and gender).

9. Although it could be said that, at the beginning of the twentieth century, the principle of racial equality had been expressed literally in a vacuum, the fact that it was currently based on an impressive collection of legal rules had not eliminated the above-mentioned problems. The turn of the century had been marked by wars and conflicts rooted in prejudice and

intolerance, as though reality were defying the principles and legal rules that had been promulgated. Moreover, some of the core principles were being sorely tested in the treatment of aliens, migrants and refugees, to mention only a few categories.

10. Against that dismal background, one thing was clear: if anyone could keep hope alive, it was CERD. The decision taken at the forty-fifth session to systematically include on the Committee's agenda an item devoted to the prevention of racial discrimination, including early warning measures and urgent action procedures, was crucial. From the strategic standpoint that preventive approach constituted a major breakthrough. At the dawn of the twenty-first century, the challenge lay in preventive measures to be taken at the national level in the constitutional and legislative spheres, in the judicial and law-enforcement systems, in education policy and in the institutions responsible for providing special protection for the most vulnerable individuals.

11. Those preventive strategies at the national level should be buttressed by exchanges of views and experience at the regional level which, in turn, would help to strengthen prevention and protection. By building on both national strategies and regional efforts, it would be possible to reinforce international cooperation for the prevention and elimination of racial discrimination.

12. Turning to the new developments that had taken place since the Committee's last session, he was pleased to announce that South Africa, Kazakhstan and Lithuania had ratified the Convention, thereby bringing the total number of States parties to 153. South Africa and Malta had also made the declaration provided for in article 14 of the Convention, as a result of which the number of States parties which recognized the Committee's competence to receive and consider recommendations currently stood at 27. With regard to the amendments to article 8 of the Convention, there had been no new ratifications and therefore, with an unchanged total of 24 States parties, the amendments had not yet entered into force.

13. Moreover, as the members of the Committee were certainly aware, the Commission on Human Rights had established an open-ended working group on the forthcoming World Conference against Racism to review and formulate proposals to be transmitted to the Commission for consideration.

14. As the members were also aware, the General Assembly had decided to extend the summer session of the Committee by one week. That decision would be implemented on a trial basis during the coming summer and the following year.

15. The Committee had an impressive number of items on its agenda. On behalf of the High Commissioner for Human Rights, he commended the members for their dedication, assured them of the full and ongoing support of the Office of the High Commissioner and expressed the hope that their work would turn the twenty-first century into an era of equality, tolerance and good-neighbourliness.

16. The CHAIRMAN thanked the Deputy High Commissioner for Human Rights for his statement, which certainly provided food for thought. He had particularly appreciated his historical analysis.

17. However, he regretted that Mr. Ramcharan's statement had made no mention of the many administrative problems with which the members of the Committee were faced. Although the members were kindly invited to attend meetings of the Office of the High Commissioner, as well as other important meetings concerning human rights which were sometimes held in places far from their homes, no arrangements had been made to cover their travel costs. Likewise, if the members intended to give radio or television interviews concerning serious problems of discrimination, they were totally unable to hold urgent meetings due to the lack of financial resources.

18. He hoped that the Deputy High Commissioner for Human Rights would bring those questions to the attention of the High Commissioner so that the latter could make suggestions concerning ways to enable the members of the Committee to address those problems in an effective manner.

19. Mr. BANTON drew the Committee's attention to the need to avoid overlapping between the activities of the various treaty-monitoring bodies in the field of human rights. In that regard, he hoped that the Office of the High Commissioner for Human Rights would cooperate with the secretariat of the Committee with a view to ensuring rational management of the meagre resources available, for example by avoiding situations in which different treaty-monitoring bodies might prepare reports on the same questions for submission to supervisory bodies. To that end, there should be better coordination between the chairpersons of those various bodies.

20. He also drew attention to the need to ensure the proper functioning of the Website of the Office of the High Commissioner on the Committee on the Elimination of Discrimination against Women in order to give full effect to the relevant decision taken at the recent meeting of chairpersons of treaty-monitoring bodies and to ensure that information was offered in a satisfactory manner at the site in question and also at those of the other treaty-monitoring bodies.

21. Mr. SHERIFIS thanked the Deputy High Commissioner for his stimulating statement and wished him every success in his new functions. He noted with satisfaction that three further States had ratified the Convention, which brought the number of ratifications to 153 and contributed to the achievement of the aim of making the Convention universal. In that regard, he nevertheless believed that the assistance that the Office of the High Commissioner rendered to the Committee should concern mainly the countries that had not yet ratified that instrument, by encouraging them to do so, explaining to them the significance and the importance of the Convention and making representations to Governments when violations were reported in their territory.

22. He also hoped that the Office of the High Commissioner would endeavour to ensure a broader dissemination of information concerning the aims of the Convention and the activities undertaken by the Committee to achieve them, particularly by cooperating closely with the United Nations Department of

Information. He also hoped that the Office of the High Commissioner would accord high priority to situations involving flagrant, gross and systematic violations of human rights in some countries of the world.

23. In addition, he would like the Deputy High Commissioner to specify whether the protective barriers surrounding the United Nations Office at Geneva were in any way related to flagrant, gross and systematic violations of human rights.

24. He had noted with satisfaction the information provided by the Deputy High Commissioner to the effect that the number of States that had made the declaration provided for in article 14 of the Convention had increased considerably. He understood that the developing countries had raised objections concerning article 14 while, on the other hand, those countries would be particularly in favour of the application of that article. He requested the Deputy High Commissioner to provide the Committee with clarifications on that subject.

25. He added that the members of the Committee, most of whom lived in countries at a great distance from the United Nations Office, were unable to attend meetings to which they were invited in their capacity as members of the Committee due to the lack of the necessary financial resources. The Office of the High Commissioner should study that question.

26. The CHAIRMAN, replying to part of the question that Mr. Sherifis had addressed to the Deputy High Commissioner, said that, for his part, he understood that some developed countries had raised objections not to article 14 but to the Convention itself. He added that the position of the developing countries was evolving in response to the lack of impartiality in the handling of human rights violations.

27. Mr. van BOVEN welcomed, with great personal satisfaction, Mr. Ramcharan's assumption of his new functions as Deputy High Commissioner for Human Rights and thanked Mr. Ramcharan for the kind words addressed to him. Current developments called to mind their past collaboration on the human rights situation in Guatemala, where the National Commission of Inquiry had recently revealed violations that were even graver than those that they had suspected at the time. The genocide that had been committed against the Mayas in that country once again underlined the fact that it was the indigenous populations, being particularly vulnerable groups, which were most frequently the victims of the gravest large-scale and persistent acts of discrimination against the rights of the human person. The Committee should bring pressure to bear on the Governments concerned in order to induce them to adopt a position and intervene with a view to putting an end to such situations. The preventive approach should also be emphasized in order to avoid the recurrence of such acts.

28. He said that the ratification of the Convention by South Africa constituted a historic event which should be particularly welcomed. He recalled that the long struggle that had been waged in South Africa against the apartheid regime had given rise to a number of measures and innovative initiatives by the United Nations and had been highly instrumental in ensuring the adoption of the Convention.

29. Mr. FERRERO COSTA thanked the Chairman for the kind words addressed to him on the occasion of his resumption of his seat on the Committee after a period of absence necessitated by important political functions in his country. He welcomed Mr. Ramcharan's assumption of his new functions as Deputy High Commissioner for Human Rights, as well as the appointment of Mr. Francesco Aguilar as the new Representative of the Secretary-General, which augured well for the future of the Committee given the devotion of those persons to the struggle against discrimination and the cause of human rights.

30. He regretted that the Committee's activities were not receiving the attention that they merited and, in turn, stressed the need to accord continuing priority to the prevention of violations, which should be considered as one of the Committee's principal tasks. He also stressed the need to affirm the Committee's presence in that field. He likewise regretted that the considerable professional skills and experience of the members of the Committee were not being used to greater advantage to settle problems and situations involving human rights violations throughout the world. In that regard, it was unfortunate that provisions to that effect had not been included in the Convention itself.

31. Having previously noted, in his capacity as Minister for Foreign Affairs of his country, that the exact functions of the Committee were not widely known at the international level, he invited the experts to study mechanisms to keep Member States and their citizens better informed of their fundamental activities within the United Nations machinery for the defence of human rights.

32. He would like to know more about the Committee's participation in the organization of the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. He would be grateful if the Deputy High Commissioner could specify what measures had been planned to enable the Committee, which was the principal organ of the United Nations system in the field of racial discrimination, to participate extensively and actively in that organization and particularly in the selection of the topics of the Conference.

33. He was also glad to learn that 153 States had now ratified the Convention, which had thereby become one of the most widely recognized international human rights instruments. That was a reflection of the fact that the Convention and the Committee enjoyed the support of the vast majority of the international community.

34. Mr. de GOUTTES endorsed the observations made by Mr. Ferrero Costa, Mr. van Boven and Mr. Sherifis. Referring to the question of the preparations for the World Conference against Racism, he recalled that CERD, by virtue of its mandate, had an important role to play within the open-ended working group that had been established by the Commission on Human Rights. Moreover, in view of the fact that regional meetings were being prepared, he emphasized that it was highly important to draw up the agenda of that Conference without further delay so that the parties concerned could take note of the topics put forward within the framework of the said Conference, as well as the reports prepared within the United Nations system. In that way, the regional meetings would be able to focus on topics determined by the United Nations.

35. Mr. RECHETOV, while welcoming Mr. Ramcharan's return to Geneva, said that he regretted the lack of direct communication with the management of the Office of the High Commissioner for Human Rights. He noted that, notwithstanding the endeavours made by CERD, it had not been possible to avoid genocidal situations. That was the case in Kosovo, for example, concerning which CERD had made recommendations which had not been put into effect. Recalling that the implementation of the Convention was one of CERD's major concerns, he called upon the Office of the High Commissioner for Human Rights to make it clear to countries that it was not sufficient to accede to the Convention, which also needed to be applied. In fact, he noted that an increasing number of countries were merely ratifying the Convention. In that regard, he drew the Committee's attention to the fact that some countries might be reluctant to apply the provisions of the Convention or to discuss problems during the CERD sessions at Geneva in the belief that the concept of human rights that United Nations organs had adopted failed to take into consideration their culture, their legal system (such as that of the Shari'a, for example) or their mode of thought, as a result of which they doubted whether a constructive dialogue could be established between them and the bodies concerned.

36. The CHAIRMAN agreed with Mr. Rechetov that an effort should be made to understand the modes of thought, the values and the legal systems of countries that were finding it difficult to implement the Convention.

37. Mr. SHAHI emphasized the preventive aspect of the work of CERD. He noted with regret that the United Nations system was powerless to prevent genocide and crimes against humanity and, consequently, on the occasion of the World Conference against Racism, the High Commissioner for Human Rights should stress the importance of preventive measures. Care should be taken to avoid repetition of the errors of the World Conference on Human Rights held at Vienna in 1993, at which CERD's representations in that regard had been drowned in a flood of statements and at which decisions had been taken on human rights questions which, in the final analysis, were less important than that of the right to life. The Committee's contribution to the preparatory work for the World Conference against Racism was a matter to which CERD attached great importance and on which the Committee had submitted studies to the Commission on Human Rights. Its proposals made reference, inter alia, to the recommendations of the Carnegie Commission concerning the establishment of a rapid intervention force for crisis situations and, in view of the financial implications, it hoped that the Office of the High Commissioner for Human Rights would give due attention to those recommendations, as well as the studies undertaken by the members of CERD.

38. In conclusion, he pointed out that education, as a preventive measure in the struggle against discrimination, was an aspect of prevention that should not be disregarded.

39. The CHAIRMAN endorsed the comments of Mr. Shahi, expressed the hope that there would be closer cooperation between CERD and the Preparatory Committee for the World Conference against Racism and invited the Office of the High Commissioner for Human Rights to duly take into consideration the studies undertaken by some members of the Committee.

40. Mr. GARVALOV welcomed the fact that, in his statement, Mr. Ramcharan had recognized the importance of CERD as a human rights treaty-monitoring body. He agreed with the Deputy High Commissioner for Human Rights that States should take action at the domestic level to combat racial discrimination. Since international norms had been established in that respect, States should apply them. With regard to the World Conference against Racism, a frank and direct approach should be adopted in order to be able to propose effective solutions to the international community. For its part, CERD would be able to make an important contribution not only to the preparations for the Conference but also to its deliberations and decisions.

41. Concerning the studies undertaken by members of CERD, he mentioned the analysis that had been carried out jointly with the Sub-Commission on Prevention of Discrimination and Protection of Minorities on article 7 of the Convention, which showed that there was little hope of eradicating racial discrimination without instruction, education, culture and information.

42. Finally, on the question of prevention, he referred to a suggestion that had been made following consultations with senior United Nations officials, namely that analyses of crisis situations carried out by treaty-monitoring bodies, within the framework of the early-warning and urgent action procedures of CERD, should be brought, through the Office of the High Commissioner for Human Rights, to the attention of the Secretary-General who would himself decide whether it was necessary to bring the situations in question before the Security Council. In this way, it would be possible to react rapidly and prevent situations from deteriorating, as had happened in the case of Kosovo.

43. The CHAIRMAN added that the Committee on the Elimination of Racial Discrimination was one of the first bodies to concern itself with Kosovo, to which it had even sent a delegation four years ago. Unfortunately, that had remained an isolated initiative and, at the time, no one had paid attention to what was happening in that territory.

44. Mr. RAMCHARAN (Deputy High Commissioner for Human Rights) welcomed the fact that the debate that he had opened had given rise to an extensive exchange of views between the secretariat and the members of the Committee on questions that were proving to be crucial for peace and justice throughout the world. He recalled that, after leaving the Centre for Human Rights at Geneva, he had participated in numerous peace negotiations and had had an opportunity to familiarize himself with numerous conflicts both within and between States. From that experience, he had concluded that the possibility of preventing or defusing numerous conflicts depended on the political will of the majority to adopt a "vision" of the future. Countries should initiate a dialogue in which all the components of society would take part and should devise policies, approaches and strategies that would enable them to coexist and to visualize a future based on respect, tolerance and good-neighbourly relations. That was where the wisdom and accumulated skills of the Committee could play a role.

45. With regard to the meeting of chairpersons of treaty-monitoring or other bodies established under the terms of international human rights instruments, the Office of the High Commissioner for Human Rights was currently preparing a core document for them. The Organization obviously did not have the resources needed to enable it to meet the challenges with which it was faced in the

field of human rights. For that reason, the High Commissioner had deemed it necessary to conduct an in-depth analysis of needs and expectations in the Organization's key fields of action, including meetings of the chairpersons of treaty-monitoring bodies. Like the members of the Committee, he acknowledged that the question of overlapping jurisdictions among the various United Nations organs responsible for verifying the application of human rights instruments was a question that should be raised on the occasion of the forthcoming meeting of chairpersons of treaty-monitoring bodies.

46. He gave an assurance that the High Commissioner for Human Rights would do everything possible to accelerate ratifications of the International Convention on the Elimination of All Forms of Racial Discrimination and to ensure a better dissemination of its objectives.

47. Concerning the present difficulty of access to the Palais des Nations, he pointed out that a group of protesters had recently gained entry to the Palais, from which they had been removed only after several days. He affirmed that, according to the Security and Safety Section of the United Nations Office at Geneva (UNOG), there were valid reasons for closing the main entrance to UNOG.

48. Believing, like Mr. van Boven, that the information concerning Guatemala that had recently been disclosed revealed practices akin to genocide, he stressed the importance of a preventive approach in regard to vulnerable population groups. In that respect, CERD had a major role to play because it had a responsibility not only to monitor the application of the Convention but also to take action in the event of the non-presentation of periodic reports by States parties.

49. On the subject of the holding of the World Conference against Racism and Racial Discrimination, he pointed out that an open-ended working group had been established by the Commission on Human Rights to make preparations for that conference. The Working Group would begin its work during the first week of the forthcoming session of the Commission on Human Rights, i.e. on 22 March of the present year. The Office of the High Commissioner for Human Rights had compiled for the Commission a document containing an exhaustive list of important works published in the field of racism and racial discrimination, as well as a detailed list of the studies and other activities that the members of the Committee had undertaken on those questions. The Office of the High Commissioner would endeavour to transmit a preliminary draft of that document to the members of the Committee before the end of the current session.

50. He also pointed out that the General Assembly and the Commission on Human Rights had specifically invited the Committee on the Elimination of Racial Discrimination, together with the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, to contribute to the holding of the World Conference against Racism. He explained that the Office of the High Commissioner for Human Rights had sought to include in that document, to be submitted to the Commission, the recommendations of the Committee's experts and those of the Sub-Commission so that they could serve as guidelines for the Working Group, the Sub-Commission and the Conference itself to formulate policies and effective strategies for action in that field. The Office of the High Commissioner, having studied

ways to ensure the success of that Conference and having drawn lessons from two decades of struggle against racism, from two world conferences against racism and from the studies conducted by the Committee, had concluded that practical proposals for action were indispensable in order to meet the challenge posed by the struggle against racism.

51. With regard to the role that CERD could play in that field, he felt that the Committee should remind the Commission's Working Group and the Preparatory Committee for the World Conference that the Convention itself embodied a global strategy to combat racism and racial discrimination and that the Committee was playing a key role in ensuring its application. Although the future of the struggle against racism and racial discrimination depended largely on the implementation of that instrument, in order to be effective the struggle at the international level needed to be backed by action at the national level.

52. Concerning the timetable of preparations for the World Conference against Racism, he indicated that a special secretariat had been formed by the Working Group to study the Conference's programme of work. That question was extremely important and he would personally ensure that the Committee's experts were systematically informed of the scheduled activities of the Conference and of the documents submitted to the Commission under that item and that the Commission's Working Group had access to the studies undertaken by CERD.

53. In response to a question concerning the follow-up on the proposals made by the High Commissioner for Human Rights during the Committee's previous session, he said that he would request Mrs. Robinson to come and personally present her viewpoint on that question to the Committee during the current session.

54. He also indicated that, as policy director of the Department of Humanitarian Affairs specialized in African questions, he had always submitted questions relating to human rights to the Secretary-General of the Organization so that the latter, in turn, could inform the Security Council. The work carried out by CERD was carefully taken into consideration by the Secretary-General's team, even if that was not directly evident. He emphasized the fact that a dialogue existed between the Secretariat and the Committee and believed that the members of CERD, in their capacity as the custodians of the Convention, would be eager to initiate a strategic review of racism and racial discrimination.

55. Mr. SHERIFIS said that he clearly understood why the Palais des Nations was surrounded by barriers and had merely wanted to raise the question of the underlying causes of the movement the members of which had gained entry to the Palais. It would be appropriate to consider large-scale violations of human rights anywhere in the world, regardless of whether they concerned individuals or peoples.

56. Mr. AGHA SHAHI said that he had a copy of the Carnegie Commission's study on conflict prevention, as well as its conclusions and recommendations on long-term "structural prevention" measures, such as education, and the role that NGOs, the scientific community and journalists could play in the

prevention of genocide. The Carnegie Commission, the eminent members of which included Mr. Cyrus Vance and Mrs. Gro Harlem Brundtland, had sent that study to all Governments and it would be quite appropriate to make it available to the members of the Committee.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CERD/C/344)

57. The CHAIRMAN drew the attention of the members of the Committee to document CERD/C/344, which contained the provisional agenda for the session. He indicated that the timetable of the session would be modified as soon as the Committee's officers had had the time to meet and discuss it. He explained that, although Bahrain had actually submitted its report in accordance with the Convention, that report, being in Arabic, would first of all have to be translated and the Committee might not be able to consider it at the next session or two. At all events, Bahrain should no longer appear on the list of States that had not submitted an initial report.

58. The provisional agenda was adopted, subject to subsequent modification.

The meeting rose at 12.25 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1305th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 1 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

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CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Eleventh to thirteenth periodic reports of Austria

This record is subject to correction.

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GE.99-40732 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4)

Eleventh to thirteenth periodic reports of Austria (CERD/C/319/Add.5; HRI/CORE/Add.8)

1. At the invitation of the Chairman, Mr. Kreid, Mr. Dossi, Mr. Szymanski, Mr. Grünewald, Mr. Marschik and Mrs. Riederer (Austria) took places at the Committee table.

2. Mr. DOSSI (Austria), acknowledging that in the past his country had been late in submitting its reports, said that work on the report due in 1999 had begun and, with the new reporting structures that had been put in place, he was optimistic that it would be ready on time.

3. There had been a number of recent developments of interest to the Committee. In a legal decision to which reference had also been made in his country's thirteenth periodic report (CERD/C/319/Add.5), the Austrian Constitutional Court had ruled that any individual could challenge administrative decisions or legislative acts by claiming that they contained racially discriminatory language. The Court had held that the Constitution Act implementing the Convention gave every person the right to question whether Austria was complying with the provisions of the Convention. In another ruling, the Constitutional Court had found that the Constitution Act prohibited the lawmakers from passing different rules for nationals from different countries without substantive justification. The law therefore required that aliens be given equal treatment.

4. The year 1997 had seen the entry into force of the Aliens Act, which sought to give priority to integrating those foreigners already living in Austria rather than to the immigration of others. That should be understood against the background of the growing numbers of foreigners entering Austria and the Austrian labour market, the opening of the eastern borders in 1989 and the difficult socio-economic situation throughout Europe. The Aliens Act also aimed to give top priority to family reunification, to facilitate access to the labour market for foreigners already living in Austria and to speed up relevant administrative procedures.

5. The new Asylum Act passed by the Austrian Parliament had introduced an independent Asylum Tribunal, a body which was certain to bring about a considerable improvement in the asylum procedure. One aspect of the new Asylum Act was the question of grounds for obtaining asylum. That issue had been discussed at great length in Austria, in particular in connection with the notion of "safe third country", i.e. whether or not asylum seekers were already in a position to obtain asylum in another country. Under the new legislation, the Ministry of the Interior pooled information on asylum questions and drew up a list of third countries regarded as safe. That did not, however, do away with individual applications for asylum: every person seeking asylum continued to have the right to an asylum procedure, and even a person who came from a country deemed to be safe could still show that he or she had a valid reason to fear persecution in his or her particular case.

6. It was fair to say that the relevant Austrian legislation implemented the provisions of the Convention in a satisfactory fashion. There was no legal or institutionalized racial or ethnic discrimination in Austria. Needless to say, the real test of the implementation of the Convention was the actual practice of the administration and the courts, as well as everyday relations between people. Aware as it was of that fact, the Austrian Government had made a considerable effort to promote educational measures in schools and universities and to train judges and the police, and had also worked on improving cooperation with non-governmental organizations (NGOs) active in that field.

7. Austria had been involved in many international undertakings, such as the Council of Europe's European Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance, the European Union's European Year against Racism and Xenophobia and the United Nations Human Rights Year. In connection with the latter, every ministry in Austria had been asked to appoint a human rights coordinator, and those persons had been meeting on a regular basis to cooperate on the respective activities of the various ministries. In the framework of the European Union, the Treaty of Amsterdam amending the Treaty on European Union contained a new article 13 on taking appropriate action to combat discrimination based, inter alia, on racial or ethnic origin. As part of the work on implementing the new article, the European Commission was considering a proposal for a special directive, i.e. implementing legislation for article 13, which would address not only the labour market but also such important issues as access to goods and services, culture, sports and the like.

8. Mr. NOBEL (Country Rapporteur) said that the Committee was reopening a dialogue with Austria that had been broken off since 1992. At that time, the Committee had observed that the report then submitted had been very brief and that a number of questions raised previously had continued to go unanswered. He drew attention to the concluding observations on Austria in the report of the Committee to the General Assembly (A/47/18, paras. 197-199).

9. Austria's thirteenth periodic report was legalistic in tone and emphasized legislation and administrative measures in force. It was to be hoped that the next report would provide more information about actual court cases and the everyday situation in the country.

10. Referring first to paragraphs 3 and 4 of the report, which cited two judgements of the Constitutional Court prohibiting lawmakers and administrative authorities from passing different rules for nationals from different countries without "substantive justification", he wondered whether the Constitutional Court could not make use of that concept as a way of manipulating the Constitution.

11. He noted that European Union policy in general called for freedom of movement for everyone from within the European Union, but closed gates for everyone else: Africans, Asians, Latin Americans, etc. That was a vision of "we" versus "them". "We" were the desirable ones, and "they" were unwelcome. The problem was how to prevent immigration policy, which had to be restrictive

in some sense, from containing a racist or xenophobic slant or fostering such attitudes. That question must be faced by all member States of the European Union.

12. The previous summer, during its presidency of the European Union, Austria had submitted far-reaching proposals not only for making asylum practices more stringent but also for placing limitations on the very principle of the 1951 Convention relating to the Status of Refugees. According to the press, such proposals were not unrelated to the presence of certain xenophobic forces in Austria's domestic political arena, such as the Freiheitliche Partei Österreichs.

13. Paragraph 14 of the report referred to six ethnic groups. Should not the Austrians also be counted as an ethnic group? The report focused chiefly on those six "traditional" ethnic groups but had very little to say about new ones. One of the organizations he had consulted, Hilfende Hände Österreichs (Helping Hands of Austria), had alleged that even long-standing ethnic groups were discriminated against in such areas as schooling, use of language, place names and signposting.

14. The World Directory of Minorities published by the Minority Rights Group (MRG) drew attention to family reunification difficulties encountered by Gastarbeiter (migrant workers), particularly from Turkey and Poland, in Austria. The children of such workers were apparently subject to the same entry requirements as first-time applicants for residence permits. Many of the estimated 20,000 Roma migrant workers were said to have been victimized by the requirement to produce documentary evidence of family bonds, with officials frequently assuming that their marriages were fictitious. He welcomed the assurance given in the introductory statement that family reunification would be given top priority under the new Aliens Act.

15. There had been reports in the media and by NGOs of criminal attacks on minorities and abusive treatment by the police of Chinese and other Asians, blacks and Roma. Although there was no evidence of a consistent pattern of abuse, such incidents were sufficiently common to constitute grounds for serious concern. Furthermore, the language allegedly used by some politicians, police officers and even judges was conducive to xenophobia.

16. He doubted whether some of the legal provisions cited in the report were precise and effective enough to meet the requirements of articles 4, 5 and 6 of the Convention. For example, the phrase "in a manner apt to jeopardize the public order" in the passage from section 283 of the Penal Code quoted in paragraph 11 could undermine the effectiveness of the legislation by placing a heavy burden of proof on persons invoking the provisions of section 283. He had similar doubts about the phrase "apt to make [neo-Nazi propaganda] accessible in public to a large number of persons" quoted from the Constitutional Act Prohibiting the National Socialist German Workers' Party (NSDAP) in paragraph 13.

17. He welcomed the statement in paragraph 18 of the report that the question of an individual's affiliation with a minority was determined solely on the basis of commitment.

18. Referring to paragraph 34, he expressed misgivings about the wording of the provision designed to safeguard article 5 (f) of the Convention, particularly the phrase "anyone who publicly puts persons at a disadvantage", which seemed unduly vague and restrictive. The same applied to the phrases "suffered a true damage" and "which jeopardizes another person's credit, earnings or progress" in paragraph 37 concerning compensation.

19. He suggested that the Austrian authorities should consider enacting a global anti-discrimination law, applicable to both the public and private sectors and covering the labour market, housing, lending, education and other areas, without awaiting further developments under the Treaty of Amsterdam. Despite the assurances given in paragraphs 38 to 47 of the report, he felt that an extra effort was needed to promote awareness of the rights protected by the Convention among the general public, judges and police officers.

20. He regretted that the report contained no information regarding compliance with articles 8 and 14 of the Convention.

21. Mr. van BOVEN said that the report had focused on legal developments and contained too little factual information. He trusted that the new reporting structures mentioned by the delegation would ensure that future reports were submitted promptly and were more comprehensive.

22. He was concerned that little or no action had been taken on some of the issues raised in the Committee's concluding observations on Austria's tenth periodic report, for example private-sector discrimination in employment and housing. The Mediation Service had apparently been abolished despite the thousands of complaints that had been filed. It was unclear to him why a country such as Austria had failed to make the declaration under article 14 of the Convention and to ratify the amendments to article 8. He hoped that the present dialogue would encourage the authorities to give higher priority to the Convention in the future.

23. While developments in the European Union relating to refugee and asylum policies and racial discrimination, particularly new Article 13 of the Treaty of Amsterdam, were of considerable relevance to the Committee's work, States parties remained individually accountable for their compliance with the Convention. It was regrettable, moreover, that the draft directive concerning new Article 13 contained no reference whatsoever to the Convention.

24. He drew attention to the Committee's General Recommendation XIX on article 3 of the Convention, which dealt not only with apartheid but with all forms of racial segregation.

25. The report provided little information on article 5. Referring to subparagraph (b) of the article, he cited an NGO report to the effect that four Roma had been killed and numerous minority activists injured in a bomb attack in the mid-1990s. What action had been taken to punish the culprits?

26. Paragraph 34 of the report mentioned new legislation to safeguard the right guaranteed under article 5 (f) of the Convention. Had the courts been seized of any relevant cases?

27. How widely were the Convention and the periodic reports disseminated in Austria? Referring to NGO allegations of abusive police behaviour towards foreigners and coloured Austrians, particularly in the form of humiliating and intimidating identification procedures, he stressed the need for training of law enforcement officers in the spirit of the Convention. In that connection, he drew attention to the Committee's General Recommendation XIII.

28. He welcomed the establishment of a National Fund for Victims of National Socialism and asked whether Roma victims would be eligible for compensation.

29. The CHAIRMAN pointed out that non-European members of the Committee might not be familiar with European legislation such as the Treaty of Amsterdam. Where there was a conflict between any such treaty and the Convention, the provisions of the Convention would presumably prevail.

30. Mr. VALENCIA RODRÍGUEZ observed that the Ethnic Group Act of 1976, which regulated the legal status of six ethnic groups defined in terms of their language, should focus on ensuring that the members of those groups were not placed at a disadvantage vis-à-vis the general population.

31. Referring to the grounds cited in paragraphs 3 and 4 of the report for authorizing differential treatment of aliens, he inquired about the meaning of the term "substantive justification". Was it based on objective criteria or was its interpretation left to the discretion of the authorities? Could the delegation provide concrete examples of its application and demonstrate their consistency with the requirement, according to the 1995 Constitutional Court judgement, for equal treatment of aliens under the Constitution Act?

32. According to paragraph 7 of the report, priority was given to the integration of aliens already in the country over the acceptance of new arrivals. He asked for assurances that there was no discrimination among new arrivals in terms of national origin.

33. With regard to article 2 of the Convention, he stressed the importance of Austria's obligations under the 1919 Treaty of St. Germain, particularly articles 63 and 66 concerning equality before the law and discrimination on grounds of race or national origin.

34. While welcoming the information in paragraphs 16 to 25 of the report concerning measures to protect the Slovenian, Croatian and Hungarian minorities, he regretted that no mention had been made of other minorities such as the Czechs, the Slovaks and the Roma.

35. He commended section 283 of the Penal Code and the Constitutional Act Prohibiting the National Socialist German Workers' Party and asked for further details about the law pertaining to societies and associations (para. 32).

36. He would appreciate additional information concerning the individual rights set forth in article 5 of the Convention and relevant domestic legislation. He also wished to know the exact wording of the criminal provision designed to safeguard the right guaranteed by article 5 (f).

37. Section 1330 of the Civil Code provided for compensation for victims of defamation but the victim had to institute criminal proceedings before filing a claim for compensation. In his view, article 6 of the Convention should be given a broader interpretation: the authority hearing and judging a case concerning an act of discrimination should also be empowered to grant appropriate compensation or damages to the victim.

38. He welcomed the action taken by the Austrian Government to incorporate human rights issues in educational curricula, the campaign against anti-Semitism and the establishment of a National Fund for Victims of National Socialism. Had similar action been taken against other manifestations of discrimination? He would appreciate additional information on the role of the media in disseminating the principles enshrined in the Convention and in publicizing progress in implementing its provisions. In general, the widest possible publicity should be given to the Convention, Austria's reports and the Committee's concluding observations.

39. Mr. GARVALOV pointed out that Chapter VIII of the Charter of the United Nations assigned a higher status to global arrangements than to regional arrangements. The Convention therefore took precedence over regional treaties.

40. Although Austria's report was informative and had been supplemented by the information provided in the introductory statement, there were a number of omissions.

41. Referring to paragraph 3 of the report, he said that, since Austria had become a party to the Schengen Agreement, nationals from countries not belonging to the European Economic Area (EEA) had been at a disadvantage in obtaining entry visas for Austria. What might the "substantive justification" be for what appeared to be across-the-board discrimination against persons who were obviously ethnically different from Austrian nationals?

42. With reference to paragraph 4, he wondered how Austria interpreted the term "alien". Was the term reserved for nationals of non-EEA countries? The Constitutional Court had found, in its 1995 judgement, that all aliens must be given equal treatment, and decisions refusing an alien equal treatment were admissible only "if and when there is a reasonable justification ...". If the Austrian authorities knew in advance of a "reasonable justification", why discriminate against all nationals of a given country?

43. Commending the policy of promoting the integration of "aliens" into Austrian society and providing them with equal opportunities with Austrian citizens, he hoped that the policy - which might be described as "positive assimilation" - included measures to develop, among other things, their culture and languages.

44. He noted with interest a finding by the Council of Europe's European Commission against Racism and Intolerance that Austria's special Constitution Act implementing the Convention "could be characterized as a short summary of the Convention's provisions adjusted to the Austrian legal system".

45. Noting from the report (para. 14) that there were six ethnic groups in Austria and that the definition of an "ethnic group" and the legal status of those groups were established by the Ethnic Group Act, he wondered whether Austria had acceded to the Council of Europe's Framework Convention for the Protection of National Minorities and, if so, how the term "national minority" compared with the term "ethnic group".

46. According to MRG's 1997 World Directory of Minorities, the main minorities in Austria included former Yugoslavs, other Central and Eastern Europeans and Turks, all of which were numerically larger than the six listed in Austria's report. There were also the same number of Jews as Czechs in Austria. Why were those groups not recognized as "ethnic"? MRG's explanation was that they were not Austrian citizens; according to MRG, that was also the case for the Roma, recent Croatian immigrants and Hungarians, but not Jews. Why was that?

47. Referring to paragraph 2 (b) of the report, could laws, orders or administrative decisions be challenged on the grounds that they contained racially discriminatory acts as well as language.

48. Lastly, with regard to the statement in paragraph 14 that everyone was free to declare their affiliation with an ethnic group, he observed that, according to the Council of Europe's Framework Convention for the Protection of National Minorities, those wishing to declare such an affiliation could only do so subject to certain criteria - they were not actually "free" to do as they wished.

49. Mr. BANTON said with reference to paragraph 1 of the report that few discriminatory actions were based solely on race, colour or national or ethnic origin; there was usually a combination of reasons, and he hoped Austria could consider substituting a word such as "primarily" for "solely" in its legislation.

50. According to a recent report prepared by the Swiss Institute of Comparative Law for the European Commission against Racism and Intolerance, only two Austrian Länder listed fundamental rights in their Constitutions and only one explicitly mentioned equality. He wondered whether the apparent absence of specific anti-racism legislation at the level of the Länder might not affect the implementation of the Convention. Was the same report correct in stating that Austria's Constitution Act implementing the Convention prohibited discrimination only between foreigners and did not protect foreigners from discrimination by Austrian citizens?

51. A European Parliament inquiry into the rise of Fascism and racism had called on the European Union to find some way of associating itself with the Convention. In the light of new Article 13 of the Treaty of Amsterdam, he endorsed Mr. van Boven's comments about the incomprehensible neglect of the Convention in so many discussions of new legislation. All the protections provided by the Convention should be incorporated into European law, for example with regard to the issue addressed by the Committee's General recommendation XIX concerning ethnic segregation, which was on the rise in neighbourhoods and schools.

52. Insufficient information was provided in the section of Austria's report dealing with article 5 of the Convention. A number of instances of misbehaviour by the Austrian police had been reported. The problem of the abuse of police powers was common to all countries and it was a question of finding institutional mechanisms to counter balance it and preventing its spread. There was no simple solution. Information on the number of complaints concerning the abuse of police powers was not an adequate gauge of implementation since many members of minority groups were too frightened of the police to bring such complaints. Even training of police officers was not enough, as could be seen from experience in London, where the Metropolitan Police, despite 30 years of training, had been unable to prevent race riots or conduct a proper investigation of the recent case of the murder of a black adolescent. Reports should show that States recognized the dangers of such injustices and were making efforts to combat them.

53. Works councils might have an important function in preventing discrimination in the workplace, as was the case in Germany. According to a recent European Union publication on the subject, Austria was the only country in the European Union, the European Economic Area or the European Free Trade Area in which an employee could be denied the right to be elected to a works council on grounds of nationality, and that only a small minority of foreign workers believed that a works council made up entirely of Austrian nationals would stand up for their interests. Was such a restriction compatible with article 5 (e) (i) of the Convention? Were remedies available under labour law or through a civil suit to those who believed they had been unfairly dismissed from employment, and if so, were they also available to those who believed they had been dismissed on racial grounds? If not, could article 6 be said to be implemented apart from action by a court or administrative authority?

54. His response to the Austrian delegation's assertion that the Austrian legal order by and large implemented the provisions of the Convention in a satisfactory manner was that it was very difficult to find evidence that effective protection of, for example, article 5 rights was ensured in Austria.

55. Mr. de GOUTTES, recalling the Committee's concluding observations on Austria's tenth periodic report, said that the current report likewise contained too little for a country of Austria's importance and he hoped for extensive oral replies to the Committee's questions.

56. He was surprised that paragraph 14 of the report provided no information on the situation of the Roma in Austria, since they were the victims of discrimination and violence in many countries of Europe. He requested additional information on the subject. He would also like more general information on racist and anti-immigrant groups and on any proceedings that might have been brought against them.

57. Like the tenth report, the thirteenth report did not specify clearly whether Austrian federal or Länder legislation complied with article 4 of the Convention. The provisions of section 283 of the Penal Code punishing propaganda or incitement to racial violence appeared to be subject to two restrictive conditions: first, the propaganda must target a specific group and second, it must be likely to jeopardize the public order. He wondered how

that was interpreted by the judicial authorities. What happened when it was not a group but an individual, or a number of individuals who were not members of groups, who were targeted? What was meant by "apt to jeopardize the public order" - did courts regard some incitements as minor and unlikely to jeopardize the public order?

58. Referring to article 5, he asked for supplementary statistics on prosecutions for acts of racism. He did not agree entirely with Mr. Banton's comments concerning complaints against the police. The number of complaints brought was a test of the general public's knowledge of the Convention and its confidence in the police. The number of prosecutions was a test of police diligence and of the justice system's approach to racist acts. The number of convictions was a test of the importance courts attached to the crime, and lastly, damages awarded were a test of the right to recourse.

59. He asked whether Austria intended to make the declaration under article 14, allowing individual communications to the Committee. What steps were being taken to promote human rights education, particularly among law enforcement and prison officers and members of the judiciary, and to disseminate knowledge of the Convention and the Committee among the general public?

60. Mr. DIACONU said there was clearly no institutional discrimination of a legislative or administrative nature in Austria. That, however, was not enough, since each State party had to take steps to ensure the effective implementation of the Convention and to protect all individuals against acts of racial discrimination. The Ethnic Group Advisory Councils were of great importance, provided they functioned well and their opinions were heard. He commended the efforts being made to ensure the equality of foreigners' and Austrians' economic rights.

61. Although the Constitution Act of 1973 prohibited racial discrimination in laws and administrative measures, it was a prohibition applying only to official and State actions, whereas the Convention prohibited racial discrimination of any kind. In a federal State, the Länder should also have such legislation. The Constitution Act referred to "distinctions", whereas the Convention referred also to exclusions, restrictions and preferences. Did the word "distinction" in the Act cover all those aspects of racial discrimination?

62. He wondered whether all minority groups were given the same treatment. For example, Slovenes and Croats were able to invoke the Vienna State Treaty of 1955. No other minority seemed to be named in Austrian law. In addition, Slovenes in Styria seemed not to have the same rights as those in Carinthia, despite the provision of the 1955 Treaty granting "the same rights". He asked the delegation to clarify those points.

63. According to NGO reports, the 1984 referendum organized by the Carinthian Homeland Service had proposed a law to segregate education into German- and Slovene-speaking schools, according to the proportion of pupils. Such a law formed the basis for segregation, which must be prevented according to article 3.

64. Article 4 required States to declare incitement to racial discrimination a punishable offence, without exemption or qualification, the point being that such activities constituted a danger to society per se, even when not linked to public order or other moral issues. It appeared from the provisions of Austrian law that organizations engaged in racist activities could be dissolved only once they had committed acts contrary to the Penal Code. Such an approach made no allowance for prevention, which would help deter groups and individuals from such activities. A review of the relevant legislation was needed to improve its coverage and application. Noting that paragraph 30 of the report stated that all propaganda in the sense of racial discrimination was a punishable offence, he asked whether Austria's reservation on article 4 might be a basis for not adopting more comprehensive laws to ensure full implementation of article 4.

65. With regard to the bomb attacks in the mid-1990s against members of the Roma and other minorities, which had led to four deaths, had the perpetrators been prosecuted, had they been punished and, if so, how? While conceding that there had been more attacks and more deaths in other countries, he observed that much was expected of a European country in terms of combating racial discrimination, with the Convention as the starting point and framework for dialogue with the Committee.

66. Mr. RECHETOV said he was gratified to see a very representative delegation from Austria, but the report was short on facts. With reference to paragraph 13 of the report, for instance, did the National Socialist German Workers' Party (NSDAP) still exist, was it actually growing or was it just a historical vestige? Was he right in understanding that if the NSDAP itself and any activity on its behalf were prohibited, then there was a presumption that any other organizations engaging in incitement to racial discrimination could also be banned, but if their individual members engaged in such activities they bore individual responsibility before the law? Were the principles of collective responsibility and collective preventive action thus only applied to the Nazi Party?

67. The Roma - a group often suffering discrimination - were commendably included in the list of ethnic groups, a distinction not recognized in other countries. However, there was no mention in the list of the new ethnic groups or minorities, nor of the Jews. Were the Jews considered an ethnic group or minority? Did they have the same status as other minorities? Obviously the Committee was in favour of the fight against anti-Semitism, but in paragraph 40, "special emphasis" was placed on the fight against anti-Semitism and only in paragraph 43 were the other victims of National Socialism, including those in concentration camps, mentioned. He had doubts about whether giving one group preference by affording it special protection was in conformity with the definition of racial discrimination in article 1 of the Convention. By way of explanation of the dangers he cited the recent agreements on compensation for forced labour in Hitler's Germany, under which a United States citizen would receive 10 times more than a Russian, with a Ukrainian receiving less still; he hesitated to ask how much an African would have received had any been involved.

68. The CHAIRMAN, speaking in a personal capacity, said that, in his opinion, being a Jew was a religious affiliation not a racial one, although he was aware that not all members of the Committee shared that view. It should be remembered that the mandate of the Committee was racial discrimination.

69. The European Union had a definition of "aliens", but after considering many reports from European countries he had concluded that some aliens were considered more alien than others in some countries, and there were differences in the treatment meted out by various countries and regions and the distinctions they drew between aliens from different backgrounds.

The meeting was suspended at 5.25 p.m. and resumed at 5.35 p.m.

70. Mr. SZYMANSKI (Austria), replying to questions relating to the competence of the Ministry of the Interior, said that Austria's new Aliens Act, in force since 1 January 1998, which gave priority to integrating aliens already in Austria over encouraging new immigrants, did not apply to refugees coming to Austria to flee persecution or seek asylum but only those who came freely, usually to work. The number of foreigners living in Austria had doubled over the previous 10 years, from 350,000 to 700,000, giving Austria the highest proportion of aliens of any European Union country after Luxembourg. That and the declining economic strength of Austria had led to the general political feeling that the need for immigrant workers was now less than even in the early 1990s. There was only room for new foreign workers in the Austrian economy to the extent that other foreigners left the country. A striking example was the case of the Bosnian refugees who had fled the inter-ethnic conflicts in 1993 and 1994. Approximately 90,000 Bosnians had entered Austria, of whom some 60,000 had received work permits, while around the same number of foreigners had left Austria during that period, having lost their jobs. Under the law on migrant workers, migrants could only be allowed to enter for work if there was work for them.

71. With regard to the integration of resident aliens, family reunification was the priority, since many of the 400,000 foreigners who had entered the country in the 1990s had not been joined by their families or their families had not been granted work permits. The new law enabled them to work legally.

72. In order to acquire legal residence, aliens must declare themselves in their home country and give proof of employment and accommodation in Austria. They must, moreover, have a place within the Government's annual quota of immigrants, determined by Länder. If all those conditions were fulfilled, they could bring their families in within two years of declaring themselves.

73. In reply to Mr. Garvalov's comments on positive assimilation and respect for immigrant cultures, he stated that Austria allowed free practice of culture and required only that Austrian laws be observed, the only valid reason for deportation being non-compliance with Austrian laws.

74. With regard to the Austrian asylum proposals during its presidency of the European Union, their purpose had been to determine a common immigration policy and they had included many points which most States had considered a useful basis for discussion. Only one point, regarding the Geneva Convention, had been open to misinterpretation and had been promptly changed. More

attention should be given to the proposals generally accepted by the member States of the European Union than to a slight doubt in an initial and superseded text.

75. On the subject of police training, he pointed out that a new law on the police adopted in the early 1990s required the Ministry of the Interior to make a ruling on police conduct and particularly to encourage the police to give no cause for suspicion of discrimination on the grounds of race, colour, ethnic or national origin, or religious or political affiliation. The Ministry had issued such instructions in early 1993. The law provided for any misconduct by a police officer to be brought before the Austrian independent Administrative Court.

76. There were two ongoing projects regarding police training and conduct. One of them, within the framework of Human Rights Year 1998, involved "human rights week" workshops attended by police "multipliers", who then returned to their units to discuss the issues in similar workshops with their colleagues. In addition, within the framework of the new police law, there was a proposal to set up a human rights commission, made up not of members appointed by the Ministry of the Interior but of representatives of various organizations, including NGOs. The commission would report to the Ministry of the Interior on respect for human rights by the police and would have free access to information and interviews in any police service. The commission was expected to be in operation by mid-1999.

The meeting rose at 6 p.m.

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Fifty-fourth session

SUMMARY RECORD OF THE 1306th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

later: Mr. YUTZIS

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ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION

Effective implementation of international instruments on human rights

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GE.99-40737 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eleventh, twelfth and thirteenth periodic reports of Austria (CERD/C/319/Add.5; HRI/CORE/Add.8) (continued)

1. At the invitation of the Chairman, the members of the Austrian delegation resumed their places at the Committee table.

2. The CHAIRMAN invited Committee members to put additional questions to the Austrian delegation.

3. Ms. SADIQ ALI, further to a question on the implementation of article 7 of the Convention put by Mr. van Boven at the previous meeting, asked the Austrian delegation to say how long the training programmes for members of the police force in combating racial discrimination had been in progress and whether any policemen had been charged with committing errors in connection with acts of racial discrimination.

4. Mr. LECHUGA HEVIA, referring to paragraph 14 of the periodic report, which explained the legal status of the ethnic groups residing on Austrian territory, said that Committee members would be in a better position to determine the situation of racial discrimination in Austria if they were also given key indicators of the ethnic communities' living conditions, such as life expectancy, access to health and education services and unemployment, which would give them a more accurate view of the situation of minority groups in Austrian society.

5. Mr. YUTZIS inquired about information emanating from the Swiss Institute of Comparative Law and the European Commission against Racism and Intolerance (ECRI) to the effect that the Austrian Länder had no specific legislation banning racial discrimination, and that the Ombudsman (Volksanwaltschaft) for racial discrimination had received only a very few complaints of acts of racial discrimination and had not intervened in any case of racial discrimination in the previous five years. Was that information accurate?

6. Mr. SHAHI made reference to information stemming from the non-governmental organizations "Helping Hands" and the Ludwig Boltzmann Institute for Human Rights, which claimed that Austrian legislation did not differentiate among its citizens on the basis of affiliation or social, racial or ethnic origin. Nevertheless, no remedy was apparently available to victims of acts of racial discrimination.

7. He had learned through the same sources that the international instruments to which Austria was party were not directly enforceable in domestic law, but needed to be adapted to the legislation. Knowing full well that Austria had expressed a number of reservations regarding various international provisions, one might wonder whether the country was really in a position to fully implement in practice the international instruments it had ratified.

8. Mr. DOSSI (Austria) expressed his delegation's gratitude to the members of the Committee for affording it the opportunity for helpful dialogue, and thanked them for their interesting questions. Those he had been unable to answer in detail with figures and statistics would be dealt with in the next periodic report.

9. It was true that, in conformity with the Austrian Constitution which provided that any administrative action must have its basis in the law, the Convention was not directly enforceable in Austria's domestic law. In order to ensure that international obligations were met in amending the domestic legislation, the Austrian Parliament referred to the international instruments the country had ratified. That applied not only to the Convention, but to other international instruments. That method enabled the administrative authorities to enforce international provisions more easily than if they were also required to invoke national laws, and was advantageous for the implementation of the Convention.

10. In reply to the question of whether the special Constitution Act against racial discrimination (CERD/C/319/Add.5, para. 1) provided the sole means of ensuring implementation of the Convention, he explained that that text embodied the fundamental constitutional principle that no law or administrative action could be the cause of discrimination based on racial or ethnic considerations. Should that be the case, every citizen had the right to appeal to the Constitutional Court against the defective law, on the grounds of unconstitutionality, and the Court would not fail to nullify the text. Accordingly, it was not only the Constitution Act, but the entire array of penal, civil and administrative laws that combined to ensure the implementation of the Convention.

11. Concerning the surprise prompted by the provision of the Constitution Act prohibiting any discrimination based exclusively on race, he acknowledged that the distinction was very difficult to determine in practice. However, the Constitutional Court's case law had recognized the validity of that provision only insofar as it applied to the provisions set forth in the instruments of the European Union relating to differentiation between nationals and non-nationals of the Union. That distinction based on origin was considered acceptable for purposes of the European integration process.

12. Regarding the Austrian definition of the term "alien", he said that under the law it referred to any person who was not an Austrian citizen. However, since its entry into the European Union in 1995, Austria had adopted a provision stipulating that certain clauses concerning aliens did not apply to nationals of States of the European Union.

13. Replying to Mr. Yutzis, he explained that the fact that the various Länder did not possess their own laws on fundamental rights did not mean that those territories lacked legislation to protect those rights. In fact, the pertinent federal laws applied to all parts of the federal territory and had to be observed by the Länder's lawmakers. Indeed, the vast majority of laws were adopted at the federal level and not by the provincial legislative bodies.

14. The Committee should not infer from the provision of the Constitutional Act banning the National Socialist German Workers' Party (para. 13) that there was such a party in Austria. The sole purpose of the Act was to prevent that party's resurgence in Austria and to dissuade anyone who might be tempted to create new groups or movements espousing National Socialist theories or disseminating such ideas in publications or through the Internet, a medium to whose activities the Austrian Government assigned very great importance.

15. Several Committee members had questioned the effectiveness of the Ombudsman. Mr. Banton, for instance, doubted whether victims voluntarily appealed to the Ombudsman against acts of racial discrimination in which members of the police force were involved. According to the Ministry of the Interior's figures, some 400 complaints of that nature had been filed in 1998, 29 per cent of them by foreigners. Since the foreign population accounted for a mere 10 per cent of the total population, the figures suggested that victims were not afraid to avail themselves of that remedy.

16. On the other hand, he was unable to provide Committee members with precise data on the duration of the training and education programmes and activities in the field of racial discrimination. He would ensure that the information appeared in the next periodic report, together with a detailed list of training and education courses taught in schools and universities to give effect to the pertinent provisions of the Convention.

17. He acknowledged, however, that Austria had not decided to approve the draft amendment to article 8 of the Convention, nor did it intend to declare under article 14 of the Convention that persons claiming to be victims of a violation by the State party of any of the rights set forth in the Convention could appeal to the Committee. He undertook to apprise the Austrian Government of Committee members' feelings on the matter.

18. In reply to Mr. Diaconu's questions concerning the letter bombs sent to Roma and members of other Austrian communities in the 1990s, he said that a suspect, who appeared to have acted alone, had been apprehended and was currently being tried. The Committee would be kept informed of developments.

19. With regard to publicizing the Committee's conclusions concerning Austria, the Government was in the process of creating a Website that would provide information on the Committee's activities, including those relating to the implementation of the Convention in Austria.

20. Radio and television stations had been called upon to uphold the principles of objectivity and respect for human rights. On the subject of official assistance to the press, he explained that State subsidies were not granted to daily newspapers run by minority ethnic groups because no such papers existed, but that 51 minority weekly publications received subsidies. Moreover, the State allocated 50 million schillings to ethnic minority media for their rechannelling programmes.

21. On the subject of xenophobia and racism, he acknowledged that the Austrian juridical system focused more on repression than prevention. The law provided that any association having overtly racist practices or objectives must be banned and disbanded. That principle was difficult to enforce in

practice, because associations with those objectives did not necessarily spell them out in the draft statutes they submitted to the authorities. The problem stemmed largely from the need in a democratic society for some balance between the freedom of association guaranteed to all persons and the right of every person not to be subjected to discrimination based on racial or ethnic affiliation.

22. The purpose of the federal law instituting the National Fund for Victims of National Socialism (para. 43) was to make reparation to all victims, including the Roma.

23. In response to a question on the implementation of the Convention in both the private and public sectors, he said that the State had indeed adopted a large number of measures, mainly in the public sector. That being so, there were plans to expand the Convention's field of application, not only to the private domain but also to all forms of non-racial discrimination, such as discrimination against persons with disabilities.

24. Turning to statistics on ethnic groups living in Austria, he explained that the only figures at his disposal dated back to the 1991 census - the next was planned for 2001 - and did not necessarily reflect the number of persons belonging to the various groups, having been compiled from a questionnaire based, not on the origin or affiliation of those polled, but on the language they used in everyday life. For instance, 2.6 per cent of the inhabitants of Corinthia claimed to speak Slovenian on a day-to-day basis; 7 per cent of the population of Burgenland Croatian and 7 per cent Hungarian; 0.8 per cent of Viennese said they spoke Hungarian and 0.5 per cent Czech; the figure for Slovaks was insignificant. He had no figures for the Roma, because they had only been recognized as an ethnic group in 1992. Where the Roma were concerned, he pointed out, in response to an earlier question, that while they constituted a majority community in certain villages in Burgenland, they were integrated into other groups in Vienna and were not segregated. It was also State policy not to voluntarily separate the different ethnic groups. For that reason, proposals to set up a distinct school system for ethnic minorities with a numerical majority in certain provinces, for instance Corinthia, had been rejected, although there were plans to provide bilingual education in certain schools. Regarding the definition of the term "racial minorities", Austrian legislation used it to refer to national minorities who were traditionally present in Austria. In his view, therefore, that interpretation was no different from that of the Council of Europe.

25. In addition, certain Committee members' surprise that the report mentioned only Slovenes and Croats, ignoring the other four groups, was due to the fact that, under the State Treaty signed in Vienna in 1995, Austria's obligation under international law was only to those two groups, even though its ethnic-group legislation recognized six traditional ethnic groups which, as such, benefited from, inter alia, regulations, subsidies and special treatment. The country's efforts were also geared towards integrating minorities recently installed on Austrian territory into Austrian society.

26. Replying to a question from Mr. Banton, he confirmed that the Austrian system did not permit foreigners to vote in the boards of enterprises. It was

a delicate subject and one which was under discussion. He also confirmed that any person unfairly dismissed, on the basis of racial discrimination for instance, could appeal.

27. In reply to another question from Mr. Banton, he explained that the Federal Constitution Act was entirely in conformity with the Convention and that it was wrong to claim, as the report of the Swiss Institute of Comparative Law had done, that Austrian legislation did not protect aliens from discrimination by Austrians.

28. In conclusion, to Mr. Shahi's question concerning the reservations to the Convention, he replied that Austria had merely proffered its interpretation of articles 4 and 5 in the context of implementation of the Convention, but had not actually expressed reservations to that instrument.

29. Mr. GRÜNEWALD (Austria) said that the Government was aware of its responsibility to fight racial intolerance and xenophobia and that administrative measures and legislation alike should move in that direction.

30. In that regard, he pointed out that the offence of incitement to hostility was only subject to prosecution if it risked disturbing the public order, in which case it fell within the competence of the courts. Heavier sentences were being imposed for that offence and in cases of recidivism. Unlike the situation in systems of ordinary law, where, depending on the gravity of the offence, the State Counsel might decide to institute legal proceedings or otherwise - in the Austrian judicial system all cases had to be heard.

31. In addition, the Prohibition Act provided for the dissolution of all National Socialist organizations and banned their reconstitution and any activity connected with Nazi ideology. It was therefore a major instrument in the fight against racial discrimination. A special chapter added to the Prohibition Law also punished anyone who denied the Holocaust, and an amendment to the Penal Code permitted magistrates to consider any racial or xenophobic motivation to be an aggravating circumstance.

32. He was convinced that the Austrian judicial system was such as to effectively implement the Convention. Moreover, it was particularly important to try and nip problems in the bud. Similarly, education, employment policy and media conduct also helped to curb intolerance.

33. Lastly, he listed a number of initiatives taken to combat discrimination: establishment of a working group to analyse the findings of the survey on the implementation of the Convention, financed by the Federal Ministry of Justice; installation of a hot line to receive complaints of racist behaviour by members of the judiciary; formulation, in cooperation with the NGOs, of a sensitization programme for magistrates on the question of racial discrimination; and, lastly, creation and installation in Vienna of the Monitoring Centre on Racism and Xenophobia, behind which the Federal Ministry of Justice had put its full weight.

34. The statistics on criminal proceedings requested by certain Committee members were not currently available, but would be supplied in Austria's next report.

35. Mr. Yutzis took the chair.

36. Mr. ABOUL-NASR pointed out that many had suffered in labour and concentration camps during the Second World War; he therefore welcomed Austria's intention, unlike other European countries, to compensate not a single group, but all victims of those practices. He hoped that payment of such reparation would be made on an equal footing without distinction of race, colour or national origin. For instance, he failed to understand why some European countries paid an American 10,000 dollars and a Russian only 1,000 dollars. It was vital that every victim of that kind of practice, or his or her heirs, should receive individual and equivalent compensation.

37. Ms. SADIQ ALI observed that the delegation had not answered the question of whether police officers in Austria had been convicted for racist or xenophobic acts.

38. Mr. GARVALOV said that he hoped the Austrian delegation would take his remarks of the previous day into consideration and not only questions put to it by the experts.

39. Regarding the definition of alien status in Austrian law, he expressed concern at the distinction that Austria's judicial system and administrative practices made between nationals of countries of the European Union and others. To endorse the Austrian definition of the concept of alien would be to place anyone who was not an Austrian citizen in that category. In point of fact, article 1, paragraph 1, of the Convention stressed that the term racial discrimination "shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin". Moreover, paragraph 3 of that article provided that "nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality".

40. To illustrate his remark, he pointed out that he was a national of Bulgaria but not of the European Union and that, as such, he was subject to "discrimination" vis-à-vis European citizens: before entering Austria, he needed an invitation from an Austrian national, which had to be validated by the authorities.

41. He also inquired why paragraph 14 of Austria's report stated that "everyone is free to declare their affiliation with an ethnic group", when the affiliation obviously depended on criteria established for the European countries by the Council of Europe Framework Convention for the protection of national minorities. In Austria one could clearly not belong to the Hungarian ethnic minority while claiming at the same time to belong to the Rom or Slovak ethnic group. What was more, the mother tongue was not the only criterion for identification with a particular ethnic group.

42. For the Austrian authorities, the term "national minorities" evidently applied to all minorities traditionally living in Austria. There was, however, another school of thought which claimed that "national minorities" also referred to the minorities of neighbouring countries.

43. Mr. van BOVEN pointed out that many countries that had ratified the International Convention on the Elimination of All Forms of Racial Discrimination in the very early stages - of which Austria was one, ratifying it in 1972 - had subsequently felt that their legislation was not altogether adequate to meet the obligations to combat racial discrimination as set out in the Convention, mainly because of deep-rooted patterns of racial discrimination. As time went by, it had been decided that racial discrimination was most often imputable to individuals and that it occurred mainly in the field of social rights, employment and housing. It was therefore not enough to say that the country's authorities would perhaps devote more attention to the question or that the European Union would perhaps adopt a guideline on the subject. Urgent action was called for in that area, and it would be desirable for those issues to be addressed in Austria's next report.

44. While welcoming the creation in Vienna of the Monitoring Centre on Racism and Xenophobia, he reminded the delegation that the Committee also played an essential monitoring and supervisory role in that area, and it was important to establish greater cooperation and better coordination among the various organs and authorities dealing with racism and racial discrimination.

45. He said that he had also noted the delegation's intention to inform its Government of the Committee's concern regarding the amendments to articles 8 (States parties' responsibility for the expenses of the members of the Committee) and 14 (competence of the Committee to receive and consider communications from persons claiming to be victims of a violation of any of the rights set forth in the Convention). In that connection, he pointed out that Austria had been one of the sponsors of a draft resolution of the Third Committee of the General Assembly (A/C.3/53/L.18/Rev.1), in which the General Assembly would strongly "urge States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee" (para. 13), and would "request States parties to the Convention that have not yet done so to consider the possibility of making the declaration provided for in article 14 of the Convention". Austria should practise what it had preached.

46. Mr. de GOUTTES remarked that the delegation had not replied to his question concerning section 283 of the Austrian Penal Code and, more particularly, the question of how the domestic courts interpreted the provisions of that section, under which propaganda and incitement to racial violence were punishable only if they targeted a "[specific] group" of persons and "jeopardized the public order" (CERD/C/319/Add.5, para. 11). He stressed the importance of the question, given the fact that the pertinent provision was one of the key clauses of the Austrian Penal Code on the subject of racism, and enabled the Committee to gauge the effectiveness of implementation of article 4 of the Convention. In that regard, he mentioned that Mr. Ramcharan, Deputy High Commissioner for Human Rights, had on the previous day stressed the importance of national anti-racist measures.

The meeting was suspended at 11.55 a.m. and resumed at 12.05 p.m.

47. Mr. DOSSI (Austria) replying to the experts' observations, pointed out that there had been a number of cases in which police officers were tried in the criminal courts for xenophobic or racist activities or acts. His country had set up a strict system of internal disciplinary measures for police officers found guilty of such offences; regrettably, he could not provide statistics on the subject.

48. Turning to the problem of the definition of alien status and the juridical consequences of differentiation in the regional integration process, he acknowledged its political importance, but not its juridical importance stricto sensu. To take the Committee's observations even further would mean contesting every treaty or bilateral agreement concluded between States parties to the Convention. Logic would then dictate that if Bulgaria concluded a treaty with Romania to speed up border formalities between the two States, the agreement per se would constitute discrimination based on nationality, since it would apply exclusively to Bulgarians and Romanians.

49. Drawing attention to a possible problem of translation in paragraph 14 of the report, he explained that the fact that everyone was free to declare their affiliation with an ethnic group did not mean that everyone was obliged to refer to themselves as Hungarian or Slovak, for example. The law should be seen as embodying the principle whereby no person could be forced to declare affiliation with any particular ethnic group.

50. Mr. GRÜNEWALD (Austria) said that it was difficult to answer Mr. de Gouttes' question since he did not have access to all the convictions under section 283 of the Penal Code and the way in which it had been interpreted. However, as a judge, he could say that he would not personally put a limited interpretation on that section, and promised to do his utmost to ensure that the next report contained the juridical interpretations of the provision of the Austrian Penal Code raised by Mr. de Gouttes.

51. Mr. NOBEL (Country Rapporteur) said that he appreciated the delegation's replies, which had supplemented the report, and welcomed the concrete and constructive dialogue. However, the Committee awaited more precise demographic statistics and specific information on the case law and the various racial discrimination court cases, complaints received through the Ombudsman and actions carried out by the police supervision bodies, whether the supervision was internal or entrusted to the criminal courts. The Committee could not but welcome the suggestion that Austria's reports were soon to be published in written form and on the Internet and would be a topic of public discussion.

52. He said that he would also like Austria's next report to include measures taken to combat xenophobia and racism - including anti-Semitism - at different levels. He stressed that today it was less the religion than the race of those they considered Jews that anti-Semites attacked.

53. He also wished to draw the Austrian delegation's attention to the concern caused by the offensive language used by official State representatives, as reported in the press.

54. He welcomed Mr. Dossi's explanations on the workings of the Austrian Constitutional Court. He would appreciate it if the next report were more comprehensive in its treatment of the questions of the various forms of judicial protection granted, depending on the national origin of asylum seekers, protection of foreign victims of discrimination by Austrian citizens and anti-discrimination legislation in the private sector.

55. In his view, the State party should review its current legislation and consider amending its civil and criminal laws to bring them fully into line with articles 4, 5 and 6 of the Convention, concerning, respectively, condemnation of propaganda and organizations based on racist ideas or theories, prohibition of racial discrimination and the right of everyone to equality before the law, and to remedies against any acts of racial discrimination. The fact that the Austrian Penal Code repressed racial discrimination only when it was "apt to jeopardize the public order" and was directed "against a [specific] group" of persons (CERD/C/319/Add.5, para. 11) limited the effective implementation of that provision. Further noting that Austria had not expressed reservations of substance, but rather reservations of principle, to articles 4 and 5 of the Convention, he wondered whether it might not withdraw them.

56. The CHAIRMAN announced that the Committee had completed consideration of Austria's eleventh, twelfth and thirteenth periodic reports.

57. The Austrian delegation withdrew.

58. Mr. Aboul-Nasr resumed the chair.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION

Effective implementation of international instruments on human rights: note of the Secretary-General transmitting to the General Assembly the report of the tenth meeting of persons chairing the human rights treaty bodies (agenda item 6 (b))

Report of the persons chairing the human rights treaty bodies on their tenth meeting (A/53/432)

59. The CHAIRMAN invited Committee members to refer to document A/53/432, which reported on the deliberations of the tenth meeting of the persons chairing the human rights treaty bodies, held in Geneva from 14 to 18 September 1998.

60. In addition to the persons chairing all the bodies concerned, many NGOs and various United Nations specialized agencies had attended the meeting (a detailed list could be found in paragraph 7 of the report).

61. During the meeting, the representatives of 55 States parties had been invited to a private meeting at which there had been a very constructive exchange of views, although no new proposal or conclusion had been framed.

62. The bulk of the work consisted of a brief review of the workings of the treaty bodies and consideration of how they could be improved. Although many

documents - listed in paragraph 13 - had been presented, few new suggestions had been put forward other than the usual exhortation to strengthen cooperation.

63. He observed that hopes that ratification of the six major international human rights instruments would soon be universal had again been expressed.

64. As Chairman of CERD, he had had occasion to raise briefly the specific problems and difficulties the Committee had encountered. Although the idea of holding sessions in New York had won some support, it had not in the end been endorsed by the General Assembly. However, it had been noted that it would be advantageous if the treaty bodies were able to meet on an occasional basis at the various United Nations regional offices (para. 33).

65. Criticism had been levelled at media coverage of the treaty bodies' activities, with journalists accused of favouring the consideration of reports concerning the Western countries and "forgetting" the rest of the world.

66. Mention had been made of problematic relations between treaty bodies and it had been agreed that cooperation needed to be improved.

67. The meeting had resulted in a number of conclusions and recommendations, which were reproduced in paragraphs 55 to 69 of the report.

68. Mr. van BOVEN agreed with the Chairman that the report of the persons chairing the treaty bodies did not lend itself to comment.

69. Mr. BANTON said that he understood the very restrained reaction to, and Mr. Aboul-Nasr's disappointment in, the outcome of the meeting of persons chairing the treaty bodies. However, those meetings had a precise role to play and the recommendations they had formulated in the past had been well received by the General Assembly and had often been followed up. It was a forum for independent views that made for progress in a context in which the balance of opposing forces often led to inertia.

70. Mr. de GOUTTES said he had two observations to make concerning the conclusions and recommendations in document A/53/432. Paragraph 55 stated that "[t]he chairpersons expressed strong concern at the geographical and gender imbalances reflected in the composition of certain of the treaty bodies", in particular at the unequal geographical distribution and the unsatisfactory number of African experts. It was true that the African continent was greatly under-represented. The paragraph ended with a sentence in which the States parties were called upon to "make a concerted effort to remedy the imbalances". Considering that last sentence to be very important, he inquired whether any suggestions on the subject had been made at the meeting.

71. Additionally, paragraph 67 stated that the chairpersons had "strongly endorsed the proposed plan of action to strengthen the implementation of the Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment", and that

they had "requested the High Commissioner for Human Rights to ensure that the finalization and subsequent launching of a plan of action be given absolute priority and that necessary resources be made available".

72. If he understood correctly, in the light of the treaty bodies' success, the regular budget resources were no longer adequate, and it had been suggested that extrabudgetary funds be solicited. However, no mention had been made of the enormous effort already made on behalf of the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights.

73. He wondered whether, in that context, there was a serious chance of obtaining extrabudgetary resources and whether some of the planned expenditure would still be charged to the regular budget. He also inquired whether the plan of action to strengthen the implementation of the international human rights instruments would cover all the treaty bodies, including those dealing with the rights of the child and with economic and social rights, which had already been "favoured", so to speak. He professed to be reassured by the negative reaction he observed in the meeting room.

74. Mr. van BOVEN, like Mr. de Gouttes, wondered why different treatment was meted out to the various treaty bodies, which was both unfair and illogical.

75. The CHAIRMAN said he took due note of Mr. de Gouttes' criticism of the report of the meeting of the chairpersons of the treaty bodies. Returning to Mr. Banton's remark that the General Assembly had in the past successfully followed up the recommendations formulated at those meetings, he asked whether the Assembly had reacted to the document under consideration and discussed the recommendations contained therein.

76. Mr. VALENCIA-RODRIGUES said that the General Assembly had indeed taken the document into consideration, but had not formulated any specific resolution on the subject.

77. Mr. HUSBANDS (Secretary of the Committee) said that in paragraph 4 of the pertinent draft resolution submitted by the Third Committee to the General Assembly (A/C.3/53/L.22/Rev.1), mention had been made of the report of the chairpersons of the treaty bodies on the deliberations of their tenth meeting.

78. Mr. SHERIFIS said that paragraph 2 of the same draft resolution stated that the Assembly would encourage the treaty bodies to give careful consideration to the relevant conclusions and recommendations in the report of the persons chairing the human rights treaty bodies.

79. The CHAIRMAN thanked the two previous speakers for their explanations, and asked whether the General Assembly had ruled on the matter, which he did not think it had.

Strengthening of the implementation of the international human rights instruments: draft global plan of action (document distributed in the meeting room in English only)

80. The CHAIRMAN invited Committee members to discuss the text of a draft global plan of action dispatched to him by Mr. Aguilar, Chief of the Support Services Branch, under cover of a letter of 8 February 1999.

81. He had not himself had time to study the document in detail, but under its grandiose title the draft appeared, in short, to be basically requesting more staff.

82. In his view, the Committee should merely formulate recommendations on the matter, starting by giving the famous plan a more modest name.

83. Mr. BANTON said that while the title of the draft global plan of action was perhaps ambitious, one had to be chosen and it could attract the attention of potential contributors. The proposals it contained were doubtless of more interest to other treaty bodies than they were to CERD, but some of its observations were extremely pertinent. For instance, the fact that communications in Russian could not be examined for lack of adequate linguistic support was a very real operational problem.

84. With regard to the three proposals contained in paragraph 13 of the draft, the idea of assisting Governments in preparing and coordinating advisory services programmes in connection with the treaty body recommendations was a useful one. It was important to provide a more effective response to States' expectations by, possibly, assigning extra staff to those tasks. The third proposal, namely to assist the treaty bodies in the preparation of background papers on selected themes, could also be useful, although it might be more important for treaty bodies other than CERD.

85. As it was, his only reservation concerned the first proposal in paragraph 13, in particular the second sentence, which stated that the plan of action team should not duplicate research work carried out elsewhere. When a rapporteur was called upon to study the situation in a given country, the documents supplied to him by the Committee's secretariat on the manner in which that country's practices had been analysed by other United Nations bodies were extremely useful. In that regard, Committee members were not all in the same boat. Members from the developed countries had access to libraries and information on the Internet, as well as all kinds of reports, while those in the developing countries might find it difficult to obtain certain information, if only because of the malfunctioning of the postal services.

86. Since the Committee had agreed to a system of division of tasks with the special rapporteurs, it was important for the latter to be in a position to indicate specifically the information they lacked, and not be obliged to refer back to the secretariat or their assistants. He invited Committee members to give careful consideration to the matter and to the wording of the corresponding proposal.

87. Mr. de GOUTTES said that, like the Chairman, he was not convinced that the staff-increase approach was the best. It would probably have been better to begin by defining priorities, so that staff needs could then have been assessed.

88. Mr. van BOVEN said that there was an important omission in paragraph 7 of the draft, which listed the treaty bodies' activities. In his view, one of the most important activities of the treaty bodies was to formulate conclusions, but the draft had been silent on the subject. With regard to section III, which dealt with objectives, he considered it illogical to speak first about personnel needs and then about the tasks to be accomplished; it should be the other way around. Also given the scope of the functions listed in paragraphs 13, 14 and 15, he wondered whether they could be performed by only six Professionals and one General Service staff member.

89. The CHAIRMAN, summarizing the discussion, said that Committee members, himself in particular, had not had sufficient time to study the global plan of action in depth. He pointed out that the document had been prepared by the Secretary of CERD, who had not attended the meeting.

90. Once he had given it careful study, he would draft a considered comment, with the assistance of Mr. Banton and Mr. van Boven, taking each person's suggestions and observations into consideration.

The meeting rose at 1.05 p.m.

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Fifty-fourth session

SUMMARY RECORD OF THE 1307th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

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(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (continued)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Ninth and tenth periodic reports of the Republic of Korea (CERD/C/333/Add.1)

1. At the invitation of the Chairman, Mr. Jong Hoon Kim, Mr. Ho Young Ahn, Mr. Kang-Il Huh and Mr. Jae Hoon Lim (Republic of Korea) took places at the Committee table.

2. Mr. Jong Hoon KIM (Republic of Korea), introducing his country's report (CERD/C/333/Add.1), assured the Committee that its comments would serve as a source of inspiration for the promotion and protection of human rights in the Republic of Korea.

3. The questions raised during the consideration of the eighth report and the Committee's concluding observations (CERD/C/304/Add.12) had been given due attention in the preparation of the current report. The Republic of Korea had made the declaration under article 14 of the Convention on 3 March 1997. All duly ratified international treaties and instruments, including the Convention, were directly applicable under Korean domestic law. However, the possibility of enacting additional legislation to ensure more effective implementation of the Convention had not been ruled out. As the Republic of Korea was ethnically homogeneous, there had been little need in the past to address the issue of racial discrimination, which was why article 11 (1) of the Constitution, which prohibited discrimination on grounds of sex, religion and social status, made no reference to racial discrimination. It was accepted, however, that the list was not exhaustive and that racial discrimination was also strictly prohibited under the terms of that article.

4. The Republic of Korea had ratified the six major United Nations human rights instruments, including the two Covenants.

5. With regard to article 4, the Republic of Korea maintained its position that existing constitutional safeguards and domestic legislation were sufficient for its full implementation. For example, an act of racial discrimination was punishable under articles 307 and 308 of the Penal Code concerning defamation and under article 311 concerning libel. However, the adoption of additional legislation for the effective implementation of article 4 might be envisaged if circumstances so required.

6. The inauguration of President Kim Dae-Jung, a lifelong advocate of human rights and democracy, in February 1998 had been a milestone in Korean history. It was the first transferral of power from the ruling party to the opposition since the founding of the Republic of Korea 50 years previously. The new Government had taken concrete steps to bolster national human rights protection machinery, including preparations for the enactment of a human rights bill and the establishment of an independent human rights institution by the end of 1999. The human rights bill strictly prohibited discrimination, inter alia on grounds of race, religion, political views, gender and mental or physical disability.

7. The Government had ratified two core International Labour Organization (ILO) Conventions on 4 December 1998: Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, and Convention No. 138 concerning Minimum Age for Admission to Employment. Ratification of the former reflected the Government's commitment to eliminating discrimination against foreign workers. In October 1998, the Government had decided to extend the coverage of the Labour Standards Act to illegal foreign workers, who now enjoyed the same benefits and protective measures as Korean workers. The Foreigners Land Acquisition Act had been amended on 15 May 1998 to abolish discriminatory elements and give foreigners the same status as Koreans in terms of land acquisition rights and obligations. The Nationality Act had been amended on 13 December 1977 to allow a person to obtain Korean nationality if either parent - not just the father, as before - had been a Korean national at the time of his or her birth.

8. The Korean Government was committed to the harmonious combination of three basic tenets in building the country's future: democracy, a free market economy and respect for human rights. It conceded that there was room for improvement and hoped that the Committee's suggestions would expand the scope of human rights awareness in the country. Since joining the United Nations in 1991, the Republic of Korea had participated actively in the promotion of human rights, both regionally and internationally. The present report continued a trend whereby it had established itself as a responsible member of the international community.

9. Mr. van BOVEN (Country Rapporteur), warmly welcomed the accession of Mr. Kim Dae-Jung to the office of President of the Republic of Korea, having signed a petition for his release from prison at a time when the Korean authorities had sentenced him to death for his human rights activism and opposition to repression.

10. Expressing appreciation of the State party's regular compliance with its reporting obligations, he said that the report was somewhat more substantial than its predecessor but was not fully satisfactory in terms of follow-up to the Committee's concluding observations of August 1996. Although such observations were not mandatory, they reflected the collective opinion of the members of the Committee and should be taken particularly seriously. He welcomed the fact that the Republic of Korea had ratified the amendments to article 8 of the Convention and made the declaration under article 14.

11. The Committee had noted in its concluding observations that neither the Constitution nor the law of the Republic of Korea explicitly prohibited racial discrimination and had recommended that constitutional and legislative measures should be taken to remedy that omission. He was not convinced by the reasons given in paragraphs 7 to 10 of the report for the authorities' failure to act on the recommendation, namely, the status of the Convention in domestic law; its primacy over incompatible provisions of previously enacted legislation; the absence of complaints of racial discrimination; and the fact that the Republic of Korea had made the declaration under article 14 of the Convention. Regardless of the status of the Convention in domestic law, it was not self-executing and implementing legislation was required not only to make certain acts punishable, especially those prohibited under articles 2

and 4, but also to serve the preventive and educational aims of the Convention. Although it might be largely true that the Republic of Korea was an ethnically homogeneous country, the interests of legal and illegal foreign workers, ethnic Chinese, citizens of other nationalities and mixed-race families needed to be protected by legislation. According to paragraph 11 of the report, only 322 persons had been naturalized Koreans during the period from January 1995 to July 1997. The Committee had noted with concern in its concluding observations that people of foreign origin, particularly Chinese, tended to suffer discrimination, for example in regard to access to citizenship and employment in some large companies. States admittedly had a sovereign right to grant or withhold citizenship but it was only fair for long-time residents and taxpayers to be permitted to obtain naturalization if they so wished. He welcomed the amendment to the Nationality Act to allow a person with a Korean mother to obtain Korean citizenship.

12. He was also pleased to hear that a national human rights institution was to be established by the end of 1999. He recommended that the Republic of Korea should take advantage of the advice and expertise of the Office of the High Commissioner for Human Rights in that connection.

13. Article 3 of the Convention concerned not only the former apartheid regime in South Africa but racial segregation in general. He drew attention to the Committee's General Recommendation XIX on the broader meaning of that article.

14. The Committee did not share the Korean authorities' view that the existing provisions of the Penal Code were sufficient to ensure effective implementation of article 4, and he referred them to its recommendation in paragraph 19 of its previous concluding observations. Drawing attention to paragraph 23 of the report, he said that the declaration under article 14 was no substitute for the legislation required under article 4.

15. While he was pleased to note that the latest report contained far more detailed information concerning article 5, he regretted the focus on subparagraph 5 (e) (i) concerning labour conditions to the exclusion of other forms of economic, social and cultural discrimination. He asked whether the Consulting Centre for Foreign Workers mentioned in paragraph 28 of the report was the same institution as the complaint centres in immigration control centres that the Committee had welcomed in paragraph 7 of the concluding observations.

16. The industrial "trainees" referred to in paragraphs 30 and 31 of the report had been a matter of concern for many years. Generally perceived as a cheap industrial labour force from poorer Asian countries, they allegedly lived under harsh conditions and were involved in labour that was dirty, dangerous and difficult. The guidelines mentioned in paragraph 30 had already been welcomed in the previous concluding observations. He was concerned about the statement in paragraph 31 that "in case that industrial 'trainees' are paid for their labour, eight provisions of the Labour Standards Act apply to them". The implication was that "trainees" were not always paid for their labour and that those who were unpaid did not enjoy the benefits of the Labour

Standards Act. He also wished to know whether "trainees" could take legal action to assert their rights and whether they had access to basic health services.

17. He noted that there were far more "illegal" (he preferred the term "undocumented") than "legal" foreign workers in the Republic of Korea. Referring to paragraph 3 of the concluding observations, he asked whether more effective measures could be taken to regularize the status of such workers, particularly those who had been in the country for some time. He wondered whether ILO Convention No. 111 would also apply to illegal workers. With reference to paragraph 6 of the concluding observations, had a work permit in fact been introduced for such workers? In general, the situation of foreign "trainees" and of the growing number of clandestine workers remained a source of concern for the Committee.

18. More information was needed on the implementation of the remaining provisions of article 5, especially 5 (e) (iii), (iv) and (v). Lastly, he asked whether there was any truth in reports that Korean women married to asylum seekers experienced difficulties in the area of employment and that asylum seekers from Africa had also experienced difficulties, as well as substandard treatment in the centres where they were placed.

19. Under the section of the report on article 6, he requested information on the practical application of the remedies listed in paragraph 37. With reference to paragraph 38, he asked whether the word "individual", which normally referred only to natural persons, was intended to include legal persons such as corporations.

20. With regard to article 7, he asked whether the training courses referred to in paragraph 42 were also available to law enforcement officials such as the civil and military police, and to prison guards, as suggested in the Committee's General Recommendation XIII.

21. He asked whether the schools for foreigners mentioned in paragraph 45 of the report were funded by the respective communities or by the public authorities. The reason why the rate of increase in the number of foreign schools did not match the rate of increase in the number of foreign nationals was reported in paragraph 47 to be that foreign workers seldom took children with them to Korea. Were they in fact allowed to take their families with them?

22. The Government of Korea had stated in paragraph 48 of the report, in response to paragraph 14 of the concluding observations that there was no discrimination against ethnic Chinese in terms of equal opportunities, but he wondered how they were treated in other areas. Even those born and raised in Korea were said to be unable to obtain citizenship and, according to a 1997 United States Department of State report, many had emigrated since the 1970s. He welcomed the Government's response, in paragraph 49 of the report, to the Committee's concerns about the children of mixed parentage, particularly Amerasian children, but the same State Department report took a less optimistic view, finding that Amerasians were nevertheless subject to informal discrimination and found it less easy to succeed in academic and business life, for example.

23. Mr. VALENCIA RODRÍGUEZ welcomed the fact that the Convention could be invoked directly before the courts and took precedence over domestic legislation. Article 37 (1) was another important constitutional provision. He also welcomed Korea's declaration under article 14.

24. He appreciated the information on demographic composition and the constitutional provision that foreigners' status was guaranteed in accordance with international law, which he took to mean that discrimination against foreign nationals was prohibited. It was gratifying to note Korea's accession to the six major international human rights instruments, although no law had been enacted to comply with article 2 of the Convention. Information was needed on any measures taken to improve the situation of more disadvantaged racial groups.

25. He said it would be necessary to see the legal texts described in the report as giving effect to article 4 of the Convention, pointing out that, while racial discrimination could indeed be subsumed under the offences of defamation and libel, all States parties nevertheless had an obligation to implement article 4 (a) and (b).

26. Observing that the overriding principle was that discriminatory treatment of foreigners on grounds of nationality should be prohibited by law, he applauded the establishment of the "Consulting Centre for Foreign Workers" and the humanitarian protection measures for illegal foreign workers. The Committee should be kept informed of any developments concerning all groups of foreign workers.

27. With regard to article 6, it would be useful to see the legal texts referred to in paragraph 36 of the report and to have information on any recourse to the remedies mentioned in paragraph 37. The constitutional provision mentioned in paragraph 38 (iii) appeared to be limited to bodily injury resulting from a crime; he asked for a description of the remedies available in cases where discrimination did not result in bodily injury.

28. Turning to article 7, he recommended that the Government should publish its periodic report and the Committee's observations, as part of its information programme, and that it should continue to provide the Committee with information on the programmes mentioned in paragraphs 41 to 44 of the report. Lastly, he asked whether the language of instruction in the schools for foreigners was Korean or the respective foreign languages.

29. Mr. de GOUTTES commended the Government of Korea on the prompt submission of its report and on its plans to establish a national human rights institution.

30. With foreigners accounting for only 0.37 per cent of the population and only 322 naturalizations between 1995 and 1997, Korean society was indeed racially homogeneous. That, according to the authorities, meant that there was no racial discrimination and no need for special legislation, and explained why there were no complaints of racial discrimination to the courts or the authorities. They had stated their readiness to take measures if and when it become necessary and were making commendable efforts to prevent racial discrimination. The Committee's thinking, however, was that the Government's

position did not enable it to meet its obligations under articles 2 and 4 of the Convention. Even in the absence of any incidents of racial discrimination, special legislation was necessary and even the broadest constitutional provision and the Government's declaration under article 14 were no substitute for domestic mechanisms and legislation.

31. Convinced as he was of the Government's good intentions and willingness to take further steps to implement the Convention fully, he trusted that, at their next meeting, the delegation would be able to report on supplementary measures to implement articles 2, 4 and 6.

32. Ms. SADIQ ALI requested information on the demographic composition of illegal workers in Korea, asking how they entered the country and whether Koreans believed their own rights to be threatened by such workers.

33. Mr. YUTZIS said that it was clear from the figures in the report that the homogeneity of Korea's population could no longer form the basis for arguing that there was no need for domestic legislation to implement the Convention. The ever-increasing numbers of foreign workers were already beginning to erode that homogeneity.

34. He enquired about the large discrepancy between the total numbers of foreign nationals resident in Korea and of legal foreign workers. According to the figures in paragraphs 11 and 31 of the report, only about 25 per cent of the nearly 27,000 United States nationals were legal workers.

35. He asked what was meant in paragraph 32 by "liquidation of overdue payment", translated into Spanish as "liquidación del pago de las horas extraordinarias". If it was overtime that was being paid, then it might not be a protective humanitarian measure but a legal requirement; if not, and there was some mistake, say in translation, were they some form of compensation to supplement illegal workers' low wages? He also requested information on the extent to which the measures mentioned in paragraph 32 (iii) were in fact implemented.

36. There was an apparent contradiction of terms regarding the children of mixed marriages. Paragraph 49 stated that they had never been subject to institutional discrimination and that informal discrimination was decreasing, but the United States Department of State report, quoted by Mr. van Boven, and other reports, spoke of significant informal discrimination. If discrimination was not specifically prohibited - in other words, was permitted - by the State and the State failed to take all necessary measures to eliminate discrimination in all its forms, that effectively amounted to institutional discrimination.

37. Mrs. ZOU questioned the repeated assertion that Korea was an ethnically homogeneous country; there were many ethnic Chinese and ethnic Japanese resident in Korea, and economic development was bringing an influx of foreigners, particularly Filipinos and Indians. The Korean authorities needed to reconsider the validity of their belief that Korea was ethnically homogeneous.

38. Paragraph 11 listed Chinese and Taiwanese separately under "foreign nationals residing in the Republic of Korea". Since Taiwanese were also Chinese, however, that brought the total number of Chinese nationals resident in Korea to over 55,000. With only 553 Chinese listed as "legal foreign workers" what were the other 50,000 Chinese doing? Were they involved in commerce or agriculture or other spheres?

39. Paragraph 11 gave the number of citizens naturalized as Koreans, but gave no indication of their original provenance. Having become Korean nationals, were they subject to equal treatment, for instance in employment, with those born Korean nationals; could they work in government organizations and large enterprises? She would like further details.

40. With regard to article 4 and the statement that there was no racial discrimination in Korea, she disputed the assertion that any problems of discrimination could be resolved, in particular, through the Penal Code provisions on information. The Korean Government needed to bring its penal laws into line with the requirements of article 4.

41. In 1996, when presenting their report, the Korean representatives had said that they would provide a breakdown of figures for illegal workers and that the latter were to be given work permits, but the report mentioned nothing of that nature; what was the current situation?

42. Were the 34 Chinese schools mentioned in paragraph 45 providing full-time education? Was Chinese the only language of instruction? If so, surely the students would have difficulty integrating into the Korean community?

43. Mr. GARVALOV said that the report was more informative than in previous years, and he particularly welcomed the measures mentioned in paragraph 4 to promote democratization and human rights, although he shared the concerns of previous speakers.

44. Although paragraph 21 cited article 11 of the Constitution as the basis for protection against racial discrimination, the Constitution made no explicit mention of racial discrimination or the imperative to prevent it. It must therefore be concluded that paragraph 21 was an attempt to interpret article 11 of the Constitution, but such interpretation might in fact detract from the value of the constitutional provisions. The admission in paragraph 6 that racial discrimination was not specifically referred to by the Constitution was contradicted by the subsequent statement that the subject was "covered in a comprehensive manner by article 37 (1) of the Constitution". Paragraph 7 was again contradictory: given that the Convention was "not directly stipulated in the Constitution", and had been promulgated and ratified by the executive, not the legislative, branch of the Government, did it in fact have the authority of domestic law? If the Convention automatically had greater authority than a discriminatory law enacted prior to the Convention's ratification, surely paragraph 8 should read "any such law shall be deemed as unconstitutional".

45. The statement in paragraph 9 that no complaint of racial discrimination had been brought led him to ask whether in fact aliens had not been subjected

to any kind of racial discrimination or whether they were unaware of their rights under the Korean Constitution and the codes and acts cited in paragraph 36. Did aliens have free and unimpeded access to the courts of law to seek redress? The issue of homogeneity had already been questioned, but paragraphs 48 and 49 gave other causes for concern: the discussion of possible discrimination against ethnic Chinese was limited to economic opportunities, whereas discrimination had a much broader compass; and the prejudice against children of mixed parentage had not yet been altogether eliminated.

46. Mr. FERRERO COSTA said that two particular points warranted repetition as being fundamental to the Committee's continuing dialogue with the Republic of Korea. One was that there were no specific constitutional or legislative provisions prohibiting acts of racial discrimination, as was the case in most States. Paragraph 6 of the report referred generically to the rights and freedoms of citizens, even those "not enumerated in the Constitution", and article 11 (1) of the Constitution had been described orally as being "accepted as exemplary, and ... neither intended nor interpreted as exhaustive", but the claim that racial discrimination was strictly prohibited was undermined by the fact that in paragraph 21 of the report, quoting article 11 (1), other specific grounds for discrimination were expressly mentioned. Why, in that case, was race not mentioned? Paragraphs 35 and 36 were also generic and failed to give any concrete information. Articles 12, 26, 27, 28 and 29 of the Constitution were said to refer to "protection and remedies for damages suffered as a result of such discrimination", but that was presumably also a generic understanding. More information would be useful. Could the delegation specify the "other basic laws" of national legislation cited in paragraph 36? How did the various codes and procedures protect citizens from racial discrimination? What measures did they include?

47. The other point concerned article 4 of the Convention and the claim that the existing constitutional safeguards and domestic legislation were sufficient for a complete implementation of that article. In fact, States parties were expressly required under article 4 to implement specific legislation, even where they considered that no discrimination existed. He welcomed the statement that the authorities would consider taking further legislative measures if future situations so required, but pointed out that, article 4 was intended also as a preventive measure and should not depend on the perceived situation of racism in the State.

48. Both those points were related to two central recommendations in the Committee's concluding observations on the previous report. He welcomed Korea's willingness to pursue its dialogue with the Committee, and the new Government's increased interest in human rights under the leadership of President Kim Dae-Jung. Observing, however, that both the written and oral reports demonstrated substantial differences with the tenor of the Convention, he hoped that the Korean authorities would seriously consider the Committee's concerns and be able to report on progress on the next occasion.

49. On article 7, what were the "measures and efforts to eliminate racial prejudices and discrimination", mentioned in paragraph 39? What efforts had the Government made to inform its citizens of the content of the Convention, and specifically what was it currently doing to eliminate racial

discrimination in Korea? The human rights symposium mentioned in paragraph 44 was laudable, but none of the topics mentioned covered racial discrimination, and even if they had, one symposium a year was surely not adequate in so populous a country. He inquired about the nature of the proposed national human rights institution, and whether its composition would include representatives of civil society as well as of government bodies?

50. Mr. SHAHI expressed his appreciation of the introductory statement and commended the fact that the Convention was directly applicable under Korean law and that the Government did not exclude the possibility of further legislative measures. While accepting the assurance that the Korean Constitution was neither intended nor interpreted as exhaustive, he pointed out that Korea had acceded to six major international human rights treaties and was preparing to establish a national human rights body, and there was in fact room for further legislation for more effective implementation of article 4.

51. The figures given for foreign residents, identified illegal foreign workers and legal foreign workers left around 24,000 people unaccounted for. Did that include United States servicemen resident in Korea? From the figures given for illegal foreign workers it appeared that 22,000 Chinese were illegal workers and of 13,000 Japanese residents only 1,551 were legal: could it be that the vast majority were illegal? If so, that highlighted the importance of specific anti-discrimination legislation, which included not giving special preference to certain ethnic groups.

52. He was pleased to hear that the Korean Government was giving greater attention to the situation of foreign workers, that Korea had ratified ILO Conventions No. 111 and No. 138 and that men and women were now treated equally with regard to acquisition of nationality by birth. On the whole, he agreed that the Korean Government had shown a strong commitment to achieving respect for human rights; he hoped, however, that the Committee's comments would be taken into account in the next report.

53. Mr. Jong Hoon KIM (Republic of Korea), replying to the Committee's questions about the statistics on foreign residents, said that members had rightly drawn attention to the discrepancy between the figures on foreign nationals residing in the Republic of Korea and those on legal foreign workers. The reason was that under his country's immigration law, any foreigner, whether working or not, who stayed in Korea for more than 90 days was required to apply to the immigration authorities for an extended-stay or residence permit, which could be issued at diplomatic missions abroad prior to arrival in Korea or after arrival within a certain period of time. Foreigners who stayed less than 90 days were regarded as being in transit or tourists and did not require a special permit. Consequently, "resident" meant persons living in Korea for more than 90 days. There were seven categories of such foreigners. For example, category (a) covered diplomats and other foreign officials working in Korea. Legal foreign workers, who fell under category (e), did not constitute the majority of legal foreign residents in Korea. Representatives of foreign companies came under category (d); they too could be said to be working, but as they were counted under another category, they were not regarded as foreign workers, because their extended-stay status was different from that of foreign workers in category (e). That legal

workers accounted for perhaps only one tenth of the overall total of 169,453 legal foreign residents did not, therefore, mean that nine tenths of foreigners in Korea were illegally employed, but simply that only one tenth fell under category (e) and were therefore considered to be foreign workers.

54. With regard to illegal foreign workers, he had tried to obtain statistics updating the figure of 129,054 persons as at the end of 1996, given in paragraph 32, but had been informed by his authorities that it was virtually impossible to identify who was legal and who was not, because persons found to be illegally present in Korea were required to return to their countries of origin or legalize their situation. He did not know how it had been possible to arrive at such a precise figure. He would provide further information on the subject at the next meeting.

55. Concerning naturalized persons, he said that 149 persons had been naturalized in 1998, 193 in 1997, 131 in 1996, 93 in 1995, 101 in 1994 and only 71 in 1993. Of the 149 persons naturalized in 1998, 16 had been from Japan, 20 from China, 2 from the United States and 19 from other countries. Of course, Korea maintained its one-China policy, but as far as individual nationality was concerned, some persons gave their nationality as Taiwanese; there were 92 such cases. The figures for naturalizations were low, but were on the increase. Such persons experienced no discrimination in finding employment or in becoming members of the Korean community. He cited the example of a naturalized German who had taken a Korean name and become a popular television star. Today it was not uncommon to encounter naturalized persons, which showed that Korean society was opening up to foreigners.

55. Regrettably, there was no specific clause in the Korean Constitution prohibiting discrimination on the basis of race or colour. There had been nine amendments to the 1948 Constitution, and if another opportunity arose to make an amendment, such a clause would certainly be taken into consideration by his Government. In that connection, his Government had the intention to include in the human rights bill currently being drawn up, an article strictly prohibiting discrimination on the basis of race, colour or origin.

The delegation of the Republic of Korea withdrew.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION (agenda item 6)

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (continued) (A/53/432)

56. The CHAIRMAN, inviting the Committee to resume its consideration of the item, recalled that, in addition to the report of the persons chairing the human rights treaty bodies on their tenth meeting, contained in a Note by the Secretary-General (A/53/432), the Committee had before it the draft proposal for a Global Plan of Action to strengthen the implementation of international human rights instruments (document distributed at the previous meeting, in English only).

57. Mr. BANTON said that he wished to make it clear in regard to the resource question that the issue, as he saw it, was one of resources additional to present resources, and that it was not, therefore, appropriate

for the relevant paragraphs to include matters presently covered by the High Commissioner's resources, which must continue to be safeguarded. The Committee might wish to include a reference to the importance of that fact in any observations. He agreed with Mr. van Boven that a statement of needs should take priority over staffing. That should include needs of Committee members and of States parties and also of the public at large, i.e. everyone who contacted the Office of the High Commissioner and who knew about the Committee's work and its plans for the future.

58. Mr. VALENCIA RODRIGUEZ agreed with other members that the report of the tenth meeting of chairpersons of treaty bodies repeated several points of recommendations adopted at earlier meetings of the chairpersons. That meant that they were underscoring matters of importance to the smooth functioning of the treaty bodies. It was essential in that context to draw attention to paragraph 11 of that report: the meeting had been one of the first opportunities for the chairpersons to meet representatives of States parties to discuss ideas for enhancing the work of the treaty bodies. It was worth mentioning that there had been 55 States parties represented at the meeting.

59. Regarding the draft proposal for a Global Plan of Action, he agreed with other members that there was a need for amendments to introduce the problematic aspects of interest to the treaty bodies in general and that the question of allocating resources for Secretariat staff should not be given such prominence.

60. Notwithstanding the difficult financial situation of the Organization, it was important to draw attention to the need to allocate sufficient resources so that the treaty bodies, particularly the Committee, could carry out their work properly and efficiently. In that connection, there was agreement on amending article 8 of the Convention; it should be made clear to the States parties how important that was for the work of the Committee.

61. Initiatives for voluntary funding should concern both States parties to conventions and other sources, including in particular the Bretton Woods institutions.

62. Continuing efforts must be made to achieve universal ratification of the various human rights instruments. It should also be borne in mind that some of the treaty bodies had an excessive workload, a matter addressed by the Committee in two decisions, 7 (53) and 8 (53). At their tenth meeting, the chairpersons had endorsed the Committee's views on the matter. Duplication of effort had also been mentioned: committees should confine themselves to their specific sphere and not make incursions into the spheres of activities of other committees.

63. Turning to paragraph 13 of the draft proposal, he said it was essential for the Secretariat to receive additional resources so that it could provide the necessary support to the treaty bodies. That could include the possibility of having one of the staff members on the Global Plan team prepare a preliminary report covering all aspects of States parties' reports so that fundamental issues could be addressed in a report by the rapporteur for the country concerned.

64. The CHAIRMAN expressed surprise at the size of the figures provided for staff assistance. Any State which saw those figures would hardly be inclined to make a voluntary contribution.

65. Mr. van BOVEN said that he doubted whether the figures given corresponded to actual salaries; they probably included other expenses unrelated to salaries.

66. Mr. DIACONU said that the meeting of the chairpersons had been important because there had been such wide participation, particularly by States parties. That might help interest States parties in the work of the Committee.

67. The report of the tenth meeting contained several remarks (paras. 50-53) on reservations to the human rights treaties. It was important to pursue discussion of that subject. The decision of the chairpersons on that question did not seem to be identical with the views of certain members of the Committee.

68. The recommendations contained in the draft proposal appeared to reflect a better awareness of the activities of the human rights treaty bodies and the need to intensify their work. Concerning paragraph 12 (a), however, he doubted that the members of the Secretariat would actually analyse the State party reports and the country situation and prepare recommendations for the treaty bodies. Perhaps all that the Secretariat might be expected to do would be to support the country rapporteurs in carrying out their work. He likewise thought it highly unlikely that staff members would, as suggested in paragraph 13, be able to "undertake basic country research and preliminary analysis of State reports for consideration by the treaty bodies". The Secretariat was not a human rights research institute. Hence the need to amend paragraphs 12 and 13.

The meeting rose at 6.00 p.m.

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Fifty-fourth session

SUMMARY RECORD OF THE 1308th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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GE.99-40760 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Ninth and tenth periodic reports of the Republic of Korea (CERD/C/333/Add.1) (continued)

1. At the invitation of the Chairman, the delegation of the Republic of Korea resumed places at the Committee table.

2. Mr. KIM (Republic of Korea) warmly thanked the Committee on the Elimination of Racial Discrimination for helping his country improve the implementation of the Convention. He would duly inform the Government and the President of the Republic of Korea without fail.

3. Replying to the questions of the members of the Committee about the implementation of articles 2, 3 and 4 of the Convention, he said that Korea's laws and regulations to a large extent reflected the relative homogeneity of Korean society, which had been mentioned several times in the report and had been the subject of many comments by the members of the Committee. That homogeneity accounted for certain aspects of Korea's domestic legal system as it related to racial and ethnic realities. At the time, the authors of the Constitution had not deemed it necessary to include provisions on racial discrimination because the composition of Korean society had been virtually "monolithic". But that did not mean that the Korean authorities intended to maintain homogeneity at all costs: they were well aware of the need to prepare citizens for the process of growing globalization which required them to be understanding, open-minded and willing to live in harmony with the other peoples of the world. Some intellectuals, academics and civil servants were of the view that homogeneity might constitute an obstacle to that preparation. Nor did Korea regard that as an excuse for not taking action to implement the Convention. A human rights bill prohibiting and punishing racial discrimination was to be promulgated later in the year. More detailed information on that subject would appear in the next periodic report.

4. A number of members of the Committee had expressed surprise at the slow progress made in setting up the National Human Rights Commission. Drawing on the experience of other countries, his Government did not want the future commission to operate as a new administrative agency or an office of the Attorney-General, but as an independent body. Hence the involvement of Koreans and non-governmental organizations in that project, which was to take concrete form starting in 1999 at the same time as the adoption of the human rights bill.

5. His delegation had taken due note of the recommendation by Mr. van Boven (Country Rapporteur) that the Republic of Korea should not implement article 3 of the Convention only with regard to apartheid in South Africa, but more broadly, with the aim of prohibiting racial discrimination in Korean society. That aspect would be dealt with in the next periodic report.

6. Mr. AHN (Republic of Korea), referring to the implementation of article 5, noted that, for several members of the Committee, the information

provided in the report had focused too narrowly on the situation of foreign workers. He explained that the drafters of the report had wanted to take account of the considerable interest in that question shown by the members of the Committee during the consideration of Korea's earlier periodic reports. His delegation would try to provide a wider range of information under article 5 in the next periodic report.

7. The "Consulting Centre" referred to in paragraph 28 of the report was in fact the same thing as the "complaints centres" mentioned in the Committee's concluding observations on the previous periodic report, the difference being due to varying English translations of the Korean text. Broad use was made of the Centre: in 1998, it had processed some 1,700 applications, primarily on questions of salary, illness and compensation for industrial accidents.

8. Most of the questions by members of the Committee on paragraphs 28 to 31 had concerned foreigners working as industrial trainees in Korea. The system had been introduced at the beginning of Korea's industrial development in order to alleviate the labour shortage in the industrial sector and provide technical assistance to developing countries. The Ministry of Labour had had to draw up directives (CERD/C/333/Add.1, para. 30) in order to deal with the new situation created by the fact that industrial trainees had often become paid employees without any form of social protection.

9. Replying to a question on the wording of the first line of paragraph 30 of the English text, he said that it should be replaced by the phrase "In case foreign workers perform labour for which they are paid" in order to dispel any ambiguity, since all trainees were paid for their work. All provisions regulating the employment sector were applicable to trainees, who had access to remedies by virtue of the provision of the Constitution guaranteeing effective protection and remedies to everyone within the jurisdiction of the Republic of Korea (para. 33). Trainees also had health insurance protection.

10. There had been major new developments with regard to trainees. In December 1997, the Republic of Korea had amended the immigration control act and henceforth foreign trainees had proper legal protection and could obtain a work permit.

11. Replying to Mrs. Zou, who had read in the report that there were only 563 declared Chinese workers in Korea, whereas 32,644 Chinese lived in the country, and had wanted to know how the other thousands of members of the Chinese community were employed, he said that the foreign worker surveys did not cover all occupations, but only certain categories, such as teachers, artists, researchers and members of the liberal professions, and the tables did not take account of the 26,000 legally employed Chinese trainees or the 21,000 persons of Chinese origin who had been living in Korea for several generations on residence visas and who were employed in various sectors.

12. As for the composition of the category of illegal workers, or some 190,000 persons, he said that it would be better to employ the term of illegal residents, as suggested by one member of the Committee. Those figures had been approximated by the immigration services on the basis of entries and departures registered at the borders and on the assumption that visitors who

had not left the territory were most probably working. The favourite method of entry of illegal residents was the tourist visa or the industrial training contract.

13. In reply to a comment by one member of the Committee, he agreed that the words "overdue payment" in paragraph 32 of the report should be replaced by the words "overtime payment".

14. In order to legalize the situation of illegal foreign workers, the Ministry of Labour had taken a very important step in October 1998 by deciding to apply the labour standards act to that group of persons. However, following the recommendation of ILO experts, Korea had determined that ILO Convention No. 111 was not applicable to illegal residents.

15. Korean women married to asylum seekers were certainly not persecuted because, to date, the authorities had not received any complaints of discrimination on such grounds. African asylum seekers were not mistreated because they were not placed in detention centres, but enjoyed freedom of movement in the territory.

16. He was not aware of any petitions for remedies filed by foreigners for violations of their fundamental rights by administrative agencies (para. 37), either because there had not been any such cases of discrimination or because those persons did not know about such procedures. The Republic of Korea would inform the Committee if such petitions were filed in future.

17. Human rights were taught at the primary school, secondary school and university levels. His Government believed that cultures were different, but equal. Acting on the suggestions made by the members, he assured them that his Government would publicize the Committee's report and the text of the Convention.

18. As to the holding of an annual human rights symposium around 10 December, he said that his country naturally organized much more than just one human rights symposium or seminar every year. The point being made in paragraph 44 of the report was that Korea celebrated Human Rights Day, as was only proper. However, his delegation would recommend that a seminar should be organized on the Convention.

19. Referring to the question of schools for foreigners (para. 45), he said that those were private schools whose courses were taught in foreign languages. At university level, there might be a difference in language skills between students from the private system and those who had attended public school, but foreign students also had the choice of going to Korean schools.

20. There was no discrimination against ethnic Chinese. In 1997, 200 foreigners had been naturalized, including 157 ethnic Chinese. China had become Korea's fourth largest economic partner and there was currently a strong demand for people who knew more about China and spoke Chinese. There was a difference between de jure discrimination, which did not exist in the Republic of Korea, and de facto discrimination, which existed in the minds of Koreans. However, the Government had taken a number of measures

to change attitudes towards ethnic Chinese and foreigners in general. In that context, the financial crisis which had hit the country in 1997 had made public opinion very aware that Korea had isolated itself both commercially and culturally. That had been quite a shock and its impact on Korean mentality had been very perceptible. Positive changes in behaviour had been noted, but much still remained to be done to help Koreans have a better understanding of how the outside world operated.

21. With regard to the small number of children of foreign nationals living in the Republic of Korea, he explained that, although they were perfectly free to settle in Korea with their children, most of the foreigners who had done so in recent years had been trainees who had come without their families.

22. On the situation of children of mixed parentage in Korea (para. 49), he acknowledged that the United States State Department was correct in saying that they were the subject of de facto discrimination. To remedy that situation, the authorities had taken a number of measures on their behalf which could be qualified as "affirmative action", particularly in the area of social policy.

23. The CHAIRMAN commended the Korean delegation for being so frank throughout the consideration of its report. That testified to a praiseworthy readiness to exchange views and conduct a dialogue with the members of the Committee. Many countries which appeared before the Committee maintained that racial discrimination did not exist in their territory and that, consequently, there was no point in adopting relevant legislation. The Committee did not accept that argument: every country must admit that, although it did not have any de jure violations of human rights or racial discrimination, that did not mean that those problems did not arise.

24. Mr. GARVALOV said that he endorsed the Chairman's remarks. The delegation's clear replies to the experts' questions were a useful addition to the information contained in the report. He wondered, however, whether the report did not sometimes extrapolate from certain articles of the Korean Constitution. On several occasions, it seemed that the authors of the report had departed so far from the original that, in the end, they had not faithfully rendered what was actually said in the Constitution. For example, paragraph 21 of the report said that "the Constitution condemns (...) any attempt to justify or promote racial hatred and discrimination", yet the actual words "racial discrimination" did not appear in Korea's Constitution.

25. Korea had made laudable efforts to ensure the implementation of article 7 of the Convention in respect of measures which States parties must take in the areas of teaching, education, culture and information. Few countries had been really sincere and honest with the Committee about the difficulties they were facing in implementing the Convention.

26. He was pleased that the measures taken by the Korean authorities in the area of education to promote understanding, tolerance and friendship between nations and the country's racial and ethnic groups were fully consistent with the provisions of article 7 of the Convention. The school curricula were noteworthy in more ways than one because they taught children dignity and respect for others and contained measures for combating racial prejudices.

Those curricula existed because the Korean authorities had become aware that racial discrimination was a problem in the country. It was encouraging, given the relatively large number of foreigners residing there, that the Korean Government had taken the necessary steps to train and educate the younger generations in order to avoid the pitfalls of racial discrimination.

27. Mr. DIACONU said that he agreed with the Chairman and Mr. Garvalov. The difficulties which the Committee had encountered in considering the report stemmed from the fact that it had had before it interpretations of the Constitution rather than texts clearly condemning racial discrimination. The Committee therefore expected Korea to introduce legislation explicitly condemning racial discrimination and showing that the country had taken the measures required under the Convention. It was a positive fact that the authorities recognized the existence of de facto racial discrimination, yet no legislation condemned it, except with regard to employment. In other areas, the legislation did not meet the requirements of the Convention.

28. One of the essential problems facing the country and which would become more acute in the future was the treatment of legal and illegal foreign workers. Given the sustained pace of economic development in Korea and its increasingly active participation in the world economy and international trade, there was every reason to believe that more and more foreigners would settle there; hence the need to ensure that they were protected against racial discrimination by special legislation.

29. Mr. KIM (Republic of Korea) said that his delegation had attempted to reply as best it could to the observations and questions of the members of the Committee, although it had not been able to provide all the details requested.

30. In sum, it could be said that the Korean administration's new policy was to teach Korean nationals to become world citizens and that a homogeneous population did not mean that Korea was a country which closed itself to outside influences. Without entering into the economic details, the very fact that 60 per cent of Korea's GDP came from foreign trade showed that it was trying to open up both its economy and the attitudes of its citizens.

31. Korea was not xenophobic; indeed, the population was friendly towards foreigners.

32. Although an effort still needed to be made and Korea had to enact new legislation to meet all its obligations under the Convention, it was steadfastly and sincerely working to do so.

33. Mr. van BOVEN (Country Rapporteur), summarizing the discussion, thanked the Korean delegation, and Mr. Kim and Mr. Ahn in particular, for their very frank and useful replies, which had cleared up many questions for the members of the Committee. It was admirable that diplomats were able to provide such detailed and high-quality technical information.

34. One of the points which had emerged during the discussion was that linguistic and terminological aspects sometimes caused confusion because it was very difficult to translate certain concepts and ideas from an Asian

language into a European language such as English. He stressed the role played by the interpreters, the translators and the précis-writers in ensuring a good understanding of those concepts and ideas.

35. He could only agree with Mr. Kim that the situation a country was no excuse for tolerating certain breaches of the Convention. It must be said that, although it had been a party to the Convention for more than 20 years, Korea still did not fully implement some of its provisions, in particular articles 2 and 4, and it was to be hoped that the bill currently being drafted would make it possible to do so. In its concluding observations, however, the Committee was duty-bound to remind the Korean Government of its obligations, not in order to condemn it, but to help and encourage it to step up the process of bringing its legislation into line with the Convention. He asked Korea to provide detailed information in its next report on the legislation adopted, while bearing in mind that what mattered was not only the de jure, but also the de facto situation.

36. Before concluding, he wanted to go back to two points. With regard to asylum seekers, the information which he had received might be erroneous, but that was a question which would have to be clarified. As to article 6 of the Convention, he had been struck by the fact that there had not been a single case reported making use of the existing remedies procedures, including the international procedures under article 14. That prompted him to ask whether the public was sufficiently aware of those procedures. In the same vein and as rightly pointed out by Mr. Valencia Rodríguez, it was important for the Committee's conclusions to be published and for the public to be informed of its work. Such transparency was one of the foundations of democracy.

37. He thanked the delegation of Korea again for its cooperation and looked forward with interest to its next reports.

38. The CHAIRMAN said that the Committee had thus completed its consideration of the ninth and tenth periodic reports of the Republic of Korea.

39. The delegation of the Republic of Korea withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

Response of the Committee to crisis situations

40. The CHAIRMAN said that he would like to make a brief statement which he hoped would be reflected in the press release drawn up at the meeting.

41. The Committee could not pass over in silence the many violations of human rights reported every day in the radio, on television and in the press. He had in mind in particular the problem of the region of the Great Lakes, the scene of outright genocide triggered by racial and ethnic conflicts, the alarming situation of the Kurds and the problem of Kosovo, on which the Committee would have the opportunity to express its views during the consideration of the document submitted by Yugoslavia (CERD/C/364).

42. The Committee was duty-bound to respond to all those problems and he suggested that it should publish press releases and devote a meeting or a press conference to them. One such press release might focus more particularly on the situation of the 30 to 40 million Kurds who were currently the victims of discrimination. Another might be of a more general nature.

43. Mr. SHERIFIS said that he fully endorsed the Chairman's proposal, especially as the problems referred to were directly related to the Committee's work. He suggested that the High Commissioner for Human Rights should be officially invited to attend the meeting on that subject.

44. Mr. FERRERO COSTA said that he wholeheartedly supported that suggestion.

45. Mr. RECHETOV said that the Committee had been one of the first bodies to draw attention to the human rights problems in Kosovo and, despite differences of opinion, the members had all agreed that Kosovo should enjoy greater autonomy. As to the tragedy of the Kurds, if the Committee discussed the problem of their fundamental rights while taking care to respect the territorial rights of the States in which they lived, it had every chance of being heard by the international community.

46. Mr. van BOVEN said that he endorsed the suggestions of the previous speakers. To draw up the press release on the Kurds, the Committee might rely on General Recommendation XXI, which had been adopted at its forty-eighth session and which clearly stated that the identity of peoples must be respected, but without "impair[ing] ... the territorial integrity or political unity of sovereign and independent States ...".

47. Mr. DIACONU said that he also supported the Chairman's suggestion, but thought that one should not be too severe with the Committee, which was doggedly pursuing its painstaking job and was not in a position to influence developments in the political situation in the world. The Committee could draw attention to certain problems, but that was as far as its powers went.

48. The CHAIRMAN said that the Committee was aware of its limits, but must not be discouraged.

49. Mr. de GOUTTES said that he fully approved the Chairman's suggestion. The Committee could not remain silent in the face of the problem of the Kurds and a public press release seemed to be the best idea because, in the past, the urgent action procedure had been applied only to individual States parties.

50. Mr. GARVALOV said that, as the session coincided with a number of events which came within the Committee's mandate, there was good reason to discuss them in the context of an urgent action procedure, but that that did not mean neglecting consideration of situations already included under that item.

51. Mr. LECHUGA HEVIA said that he supported the initiative of issuing a press release on the situation of the Kurds, which should take place during a press conference to ensure that it received public attention. That would also help enhance the Committee's image.

52. Mr. YUTZIS said he agreed with that point, especially since he had always stressed the need to publicize the Committee's work and opinions. He proposed setting up a small open-ended working group to draft the press releases, which would reflect a consensus in the Committee.

53. The CHAIRMAN, associating himself with that proposal, suggested that two or three members of the Committee should produce an outline of such press releases, which a working group could then finalize.

54. Mr. NOBEL said that he endorsed those suggestions and proposed waiting until the end of the consideration of the reports of the Syrian Arab Republic, which was one of the five countries with a Kurdish population, before finalizing the press release on the situation of the Kurds.

55. It was so decided.

Practice of the Committee ((CERD/C/54/Misc.11) (document distributed in the meeting in English only) (item 3 of the list of short notice agenda items) and (CERD/C/54/Misc.16) (document distributed in the meeting in English only))

56. Mr. BANTON requested the members of the Committee to consider the revised version of an informal memorandum that he had prepared for delegations which wanted to have fuller information on the Committee's working methods.

57. Following an exchange of views in which Mr. BANTON, the CHAIRMAN, Mr. SHERIFIS, Mr. DIACONU and Mr. RECHETOV took part, it was decided that the word "memorandum" would be replaced by the words "briefing note" throughout the document, which the Committee would forward to the secretariat as it stood, indicating that it contained instructions for delegations prepared for information only.

Organization of the work of the Committee

58. Following an exchange of views in which Mr. RECHETOV, the CHAIRMAN and Mr. BANTON took part, the Committee decided to postpone consideration of the reports on Bahrain, which had submitted a report that had not yet been translated, Slovenia, whose report was being prepared, and Bangladesh, which had requested a second postponement.

The meeting rose at 12.30 p.m.

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Fifty-fourth session

SUMMARY RECORD OF THE 1309th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

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Fourteenth periodic report of Finland

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GE.99-40748 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Fourteenth periodic report of Finland (CERD/C/320/Add.2; HRI/CORE/1/Add.59/Rev.2)

1. At the invitation of the Chairman, Mr. Huhtaniemi, Mr. Aarnio, Mr. Laakkonen, Mr. Kosonen, Mr. Rytövuori, Mr. Cortés Téllez and Ms. Hagelstam (Finland) took places at the Committee table.

2. Mr. HUHTANIEMI (Finland) said that, as Finland's culture had become less homogeneous, human rights issues had become more prominent in both domestic and foreign policies. Finland welcomed the involvement of non-governmental organizations (NGOs) in human rights issues, and he drew attention to the "shadow" report produced by the Finnish League for Human Rights in parallel with the Government's periodic report. Finland also strongly supported human rights monitoring mechanisms such as the Committee. Its delegation represented bodies dealing with issues of relevance to the Convention.

3. Mr. AARNIO (Finland), introducing the periodic report (CERD/C/320/Add.2), which was intended, inter alia, to answer questions raised by the previous report, said he would concentrate on developments in the previous 18 months. At the end of 1997, foreign nationals, numbering 85,000, had accounted for 1.7 per cent of Finland's population. That was not a large proportion but numbers had risen rapidly and issues relating to immigrants as well as traditional national minorities had been receiving more attention.

4. The 1995 reform of the constitutional provisions on fundamental rights, mentioned in the periodic report (para. 3), had had a significant impact on subsequent legislation. For example, under new educational legislation, children permanently resident in Finland - and that included immigrants - had a duty and a right to attend school. Immigrant children's special needs in terms of mother-tongue instruction, religious education and preparation for school must now also be taken into account, and there were arrangements for preparatory education for vocational education. Special provisions and subsidies had also been introduced for the education, at all levels, of Sami and Roma children.

5. New legislation, expected to enter into force in May 1999, provided for immigrants to be granted an integration benefit subject to their participation in preparing and implementing plans for their own integration. It included certain services and measures that would increase municipalities' obligations towards immigrants and thus enhance cooperation between immigrants and local authorities, thus also improving majority attitudes towards immigrants.

6. Amendments to the Aliens' Act had abolished the Asylum Appeals Board, whose powers were now vested in the judiciary, and had extended the legal remedies available to immigrants. A further amendment, due to enter into force in the autumn, would make it possible to apply the Administrative Procedure Act to matters falling within the scope of the Aliens' Act.

Authorities would be obliged to actively assist asylum seekers and immigrants' right of appeal would be extended. The amended Act would set forth the objectives of immigration and refugee policy and provide clear guidelines for its application. A resident's permit could be issued on the basis of a need for protection, rather than requiring, as before, strong humanitarian grounds.

7. Pre-trial investigation procedures had been reformed and responsibility for investigating police offences had been transferred to independent prosecutors. Amendments to the Nationality Act had speeded up the processing of applications for nationality and provided for a right of appeal. Parliament had approved an amendment to the Constitution opening up more elected public offices to foreigners. The Government intended to replace the Ombudsman for Aliens with an Ombudsman against Ethnic Discrimination, with broader powers.

8. Finland had also paid attention to the training of authorities at all levels and to the dissemination of information, as exemplified by a governmental Decision-in-Principle issued in early 1997 on measures for promoting tolerance and combating racism. The main aim, however, was to encourage immigrants and minorities to play a greater part in matters concerning themselves. Half the members of the new Advisory Board for Ethnic Relations, which had replaced the Advisory Board for Migrant and Refugee Affairs, were representatives of immigrants and traditional minorities, and those groups were also represented on the independent Commission against Racism, Xenophobia, Anti-Semitism and Intolerance. Referring to the sections of the periodic report dealing with the situation of the Sami and the Roma, he drew attention to the representative nature of the Advisory Boards for those groups, and to the latters' involvement in provincial working groups. Representative local and national associations were working with traditional minorities, including the Sami, Tatars, Old-Russians and Jews, and with immigrants - in one case specifically immigrant women - in cooperation with the authorities and NGOs, to improve their rights, promote tolerance and integration and arrange cultural activities and contacts.

9. The police authorities had been making efforts to improve police dealings with immigrants and minorities. New instructions, information materials and training courses had been devised with a view to increasing tolerance and preventing racism among the police. The police authorities had also carried out a study on offences with racist motives committed in 1997.

10. As a result of a survey of attitudes to the Roma carried out by Finland's largest daily newspaper, the Minister for European Affairs had requested the Prosecutor General to investigate discrimination against them by Helsinki restaurants. In 1997 the Ministry of Justice had ordered public prosecutors to bring charges against a journalist for insulting blacks and refugees; and more recently had ordered the Prosecutor General to bring a charge in a case of ethnic agitation in Joensuu. A case in which a teacher had been fined for a racist insult had been important in raising awareness.

11. Courts were increasingly faced with offences with racist motives. Wide media coverage of their judgements helped increase public awareness, as in the recent case of a racist slur by a teacher, who had been fined and had to pay compensation. Courts had discretion to increase a penalty if the motive for

an offence was racist, even when that was not explicitly provided by law. Consideration was being given to amending provisions on sentences in the pending reform of the Penal Code. District prosecutors were not obliged to report offences with significant social consequences - including politically or racially motivated offences. Compliance by district prosecutors would be verified.

12. The Government had responded in its periodic report (paras. 145-152) to the Committee's recommendation that Finland should prohibit and punish organizations promoting and inciting racial discrimination. Since the submission of that report, the Ministry of Justice had begun preparing legislation that would punish participation in criminal organizations. In addition, in late 1998, all the parliamentary political parties and their youth organizations had signed the Charter of European Political Parties for a Non-Racist Society. A candidate for election to Parliament had recently been excluded from the list of candidates after he had been convicted for ethnic agitation.

13. A number of studies had been carried out on ethnic relations and the attitudes of authorities and citizens and more resources had been allocated for such studies. As a result of one such study, more emphasis would in future be placed on foreign cultures when training police and border guards. A survey was also being conducted on the attitudes of the entire population towards immigrants and minorities, a study on ethnic discrimination at work was under way, and one on the treatment of ethnic issues and immigration policy in the media was to be initiated shortly. A national system for monitoring ethnic discrimination was gradually being set up between 1998 and 2000. Anti-racist attitudes were becoming more prevalent in society; after a seminar arranged by the Church, for example, priests had declared racism a sin, an opinion that had attracted much attention. The Church had also invited the Sami Thing (Parliament), formerly the Sami Parliament, to send a representative to the Church assembly. Sami war veterans and their families had been associated with Finland's independence anniversary celebrations.

14. With regard to the media, new legislation provided for radio and television programmes in the Finnish, Swedish, Sami and Roma languages. The Sami had their own radio channel and text TV, while the Roma had newspapers in Finnish, although containing some Roma, as well as a weekly news broadcast in Roma; the news was also broadcast in Russian. Sami culture generally was becoming increasingly important in Finland and the Government allocated special resources (Fmk 1 million in 1998 and in 1999), through the Sami Thing, for the promotion of Sami culture and organizations. Other government funds were set aside to promote minority cultures and publications and to combat racism. In addition, schools conducted campaigns on human rights issues, including the prevention of racial prejudice, and publications on those issues had been produced for use in schools.

15. The Sami land rights issue still presented an obstacle to Finland's ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Ministry of Justice had recently begun to give much closer attention to the issue, following a comment made by the United Nations Human Rights Committee and a decision by Finland's Assistant Chancellor of Justice.

16. With regard to the definition of a Sami, the Sami Thing believed that the existing definition, used in its parliamentary elections, did not guarantee the implementation of Sami rights. There was concern that it might make it possible for even non-Samis to vote. However, the Ministry of Justice, owing to a lack of unanimity on the measures to be taken, had for the time being dropped plans to make a connection between knowledge of the Sami language and the definition of a Sami. The electoral committee of the Sami Thing had just rejected over 1,000 applications from the descendants of Lapps to be enrolled on the electoral register, while some 400 applications had been accepted on linguistic grounds. That decision could be appealed against in the Supreme Court, but the Government was unable to comment on it in the meantime. The Ministry of Justice would be monitoring the election in order to determine whether legislative measures were needed.

17. Regarding Roma rights, considerable socio-economic differences remained between the Roma and the majority of Finland's population. Problems existed in the areas of housing, unemployment and education, and social exclusion was common. Two rapporteurs had been appointed by the Ministry of Social Affairs and Health to draft a report giving an overview of the situation and the special needs of the Roma and reviewing current government policy and legislation and ways of developing it, particularly with regard to social affairs and education.

18. He informed the Committee that the Finnish Minister for Foreign Affairs had submitted the first national report on the human rights policy of the Finnish Government to the Foreign Affairs Committee of Parliament in November 1998. The rights of minorities and indigenous peoples had been defined as being among the main areas of concern for the current Government, and Finland was also actively working in international forums to promote the rights of indigenous peoples and to combat racism. The rise in the number of immigrants had led to active drafting of legislation, and to education, information and campaigns, and the public debate had become livelier and more fruitful. The activities of the small number of extremist racist groups had become more visible, but the previously silent majority was being increasingly encouraged to speak out against racism.

19. The members of the delegation, all experts in the protection of minority rights in their respective fields of administration, would scrupulously convey the Committee's comments to the Government and looked forward to a fruitful dialogue. It was Finnish Government policy to encourage NGOs to comment on the periodic reports to the human rights treaty bodies. He regretted that the delegation might be unable to give detailed answers to the comments raised by the Finnish League for Human Rights, owing to the late receipt of its report, but he pointed out that there appeared to be some inaccuracies and a lack of balance in the text.

20. Mr. SHERIFIS (Country Rapporteur) welcomed the wealth of information in the introductory statement, which he regretted not having seen earlier, since it appeared to answer some of the comments and questions he had prepared. The periodic report was drafted in accordance with the Committee's guidelines and endeavoured to respond to its previous questions and recommendations. He welcomed the fact that several NGOs had participated in drafting the report.

21. He acknowledged the steps taken by Finland to advance, entrench and modernize its human rights protection system and the significant reforms made by Act of Parliament 969/1995 and the second part (578/1995) of the reform of the Penal Code, as described in the report. One regrettable omission was that there was no law prohibiting and punishing racist organizations for activities promoting and inciting to racial discrimination, which meant that Finnish legislation still fell short of the requirements of article 4, paragraph (b) of the Convention. The State party's obligation to enact such legislation under article 4 was particularly critical in the light of the apparent significant increase in racially motivated acts and violence in recent years. If he had understood it correctly from the oral introduction, Finland was in the process of complying with that provision of the Convention, so perhaps his concern would soon be met. The Committee often had difficulty convincing States parties of the crucial importance of fully implementing article 4.

22. Chapter 11, section 9, and chapter 47, section 3, of the Penal Code went a long way towards complying with the Convention's provisions on discrimination in employment, provision of services and admission to public places on grounds of racial, national or ethnic origin; but the number of cases brought before the courts was disappointingly low, given the allegations in the Finnish League for Human Rights "shadow" report of the actual incidence of cases.

23. Finland was to be commended for having ratified many international conventions and instruments in the field of human rights. However, the statement in paragraph 18 of the report that Finland had not ratified ILO Convention No. 169 because Finnish legislation was not in conformity with the provisions of the Convention was somewhat puzzling. A partial explanation was provided in paragraph 75, and he hoped that the reference made to it in the introductory statement would subsequently prove to satisfy the concerns of the Committee.

24. Paragraph 80 referred to a movement of a group of citizens which had arisen in the Sami homeland to oppose Sami cultural autonomy; what were the real arguments of the group? Were its members of Sami origin? If not, its action amounted to racial discrimination, and action should be taken.

25. It was regrettable that the issue of the land rights of the Sami people had not yet been resolved, but he welcomed the fact that measures were under way. Paragraph 75 implied that the Government was anxious to proceed with regulating land rights but was prevented by delays for which the Sami Parliament was responsible; it was an unfortunate conclusion, since the delays were not in the interests of the Sami people. He noted that the proposed Act whereby forests within the Sami homeland would have become common land owned by Sami villagers had not been adopted by Parliament.

26. He appreciated the recognition, in the Constitution, of the Sami and Roma peoples and of their right to develop their language and culture, although there seemed to be significant difficulties in the actual enjoyment and development of those rights. The existence of Advisory Boards for both groups, and the right of the Sami to communicate with the authorities in their mother tongue and be consulted on issues affecting them through their representatives were important, as was the possibility for Sami and Roma

pupils at primary and secondary levels to be taught in their mother tongue. Certain human rights instruments had been translated into Sami but additional efforts were necessary to provide both minority groups with all human rights instruments in their own languages.

27. Despite all the efforts by the Government, it appeared that much remained to be done to eliminate de facto discrimination against minority groups, particularly in the areas of housing, employment and services. Credit was due to the Government for the steps taken and envisaged to train government agencies to help overcome racist attitudes and institute procedures to remedy the effects of identified discrimination. Commendable measures included those taken to promote racial tolerance, the establishment of a Parliamentary Ombudsman, of the Ombudsman for Aliens, who would in future become the Ombudsman against Ethnic Discrimination, and of the Advisory Board for Refugee and Migrant Affairs, the introduction of a human rights curriculum in schools, the reform of the Finnish Constitution in 1995 to incorporate the provisions of the international instruments, and the extension of the application of fundamental rights to non-citizens. He welcomed Finland's declaration under article 14 and its ratification of the amendments to article 8 of the Convention. However, the possibility of individual petition needed to be widely publicized, since people who were unaware of their rights were unable to exercise them.

28. He had been impressed by the Decision - in principle - of the Council of State on Measures for Promoting Tolerance and Combating Racism, but asked whether its guidelines referred only to governmental departments and could therefore not be invoked in court. He welcomed the fact that fundamental rights applied to all persons within the jurisdiction of Finland. The Advisory Boards and commissions, of which there were many, were important if they had genuine power, but the Finnish League for Human Rights claimed that was not the case; could the delegation clarify that issue? He welcomed the Action Plan against Racism as described in paragraph 39 of the report, but looked forward to the speedy implementation of the principles it laid down since implementation was the key to the results the Committee sought.

29. On refugee policy, he felt that a quota of 500 persons per year was rather modest for a country of the size and wealth of Finland, as indeed was the projected increased quota of 1,000. He acknowledged the frankness of the statement that reuniting families was difficult because legislation was not sufficiently specific, that shortcoming needed to be rectified, as it was an important humanitarian issue. Currently, applicants were not entitled to appeal against decisions, although the delegation could perhaps elaborate on measures taken since the drafting of the report. Paragraph 115, quoting the Aliens' Act, stated that "No one may be ..., deported to an area where he/she may be subjected to persecution or inhuman treatment, nor to a safe area from which he/she may be further sent to such an area"; he hoped that applied equally to those seeking asylum in Finland and facing such dangers.

30. Paragraph 150 stated that the Ministerial Group on Good Ethnic Relations had concluded that the Committee's previous observations did not call for any changes to Finnish legislation in regard to article 4; he hoped that that decision would be reviewed, and by the time the next report was submitted the Finnish authorities would have come around to the Committee's way of thinking

on the implementation of that article. Had the bill submitted to parliament in February 1997, proposing more severe punishment for an offence if motives of discrimination were involved, been adopted?

31. With regard to the implementation of article 5, and specifically the investigation of offences committed by the police, the report by the Finnish League for Human Rights complained of several cases of police misconduct; did the delegation have any comments? With reference to paragraph 163 of the report, had the proposed measures for promoting tolerance and combating racism, recognizing the central role of the police in preventing and investigating manifestations of racism, been taken? Under the section on "political rights", he welcomed the fact that immigrant candidates had been nominated for several municipal councils.

32. Did the special relationship of the Nordic countries really justify the distinction made in granting the right to nationality, for which Nordic citizens required only two years' residence, as opposed to the five years' residence required by other foreign applicants? Surely that was a case of discrimination by preference? The statement in paragraph 186, that if an association aimed at influencing government affairs, the members must be either Finnish citizens or foreigners whose country of residence was Finland meant that effectively foreigners were deprived of the right to try to influence government policies even on issues which might be of direct concern to them, which was a serious weakening of freedom of association.

33. If adopted, the Decision-in-Principle of the Council of State, included various measures to counter discrimination in the labour market, along the lines suggested by the Committee in its conclusions on the previous report. It was a serious issue, as the statistics showed. According to paragraph 212 of the report, about 50 per cent of all immigrants were unemployed, with the rate for Finns being over 17 per cent. The discrepancy between the two figures was considerable, and the argument advanced by some that foreigners could hardly be hired if there were not even enough jobs for Finnish citizens clearly did not hold water. He welcomed efforts by the Finnish Government to resolve the issue, including the study which the Ministry of Labour would prepare to provide information on discrimination in the labour market.

34. Concerning article 6, it was reported (para. 278) that in 1995 there had been a total of 11 offences involving discrimination within the meaning of the Penal Code. The "shadow" report asserted, however, that few incidents actually ended up in the courts.

35. According to paragraph 280, cases of assault stemming from xenophobia were relatively rare in Finland, and an estimated 5 per cent of all cases of assault had been sparked by a racist motive. To his mind, 5 per cent was a rather high percentage and such cases could not be termed "rare".

36. Turning to article 7, he welcomed the measures taken for the training of Frontier Guard staff, prison administration staff and prosecutors, as well as the continuation by the Advisory Board for Refugee and Migrant Affairs of the programme called "Towards a Tolerant Finland" (para. 329). With regard to the paragraphs on informing the public about the Convention (paras. 345-347), he

was pleased that the Convention was published in the Treaty Series of the Statutes of Finland, especially since he had been unable to find the International Convention on the Elimination of All Forms of Racial Discrimination in paragraph 51 of the court document he had consulted listing human rights conventions published in the Finnish and Swedish languages. It was to be hoped that that omission was unintentional. Paragraph 346 also stated that the thirteenth and fourteenth periodic reports would be published in Finnish and widely distributed. Had that been done? Did the Finnish Government also intend to publish the debate in the Committee and its concluding observations? Would the Finnish Government consider the possibility of a seminar as a follow-up to the Committee's deliberations?

37. He commended the Finnish Government for its very detailed report and the constructive dialogue which the Government maintained with the Committee. Finland had every possibility of becoming a model for other countries.

38. Mr. VALENCIA RODRIGUEZ, congratulating the Finnish delegation on its exceptionally comprehensive report, said that the Committee was pleased to learn of the revision of the Finnish Constitution's main provisions on fundamental rights, which constituted a major improvement of the rights of ethnic minorities and foreigners, and of reforms to the Penal Code, prohibiting genocide and ethnic discrimination. He also welcomed the creation of the Ombudsman for Aliens and the Ministerial Group on Good Ethnic Relations and looked forward to learning more about the achievements of those bodies, which fulfilled an important function in monitoring compliance with the Convention. Likewise, the Committee sought information on any reforms conducive to strict implementation of articles 2 and 4 of the Convention, a subject which had been raised in the Action Plan against Racism approved by the Ministerial Group in May 1996.

39. Turning to the situation of the Sami population, the Sami Thing, formerly the Sami Parliament, had found that the Penal Code (chap. 11, sect. 8) did not comply in full with article 4 of the Convention and the Finnish Government should therefore review the subject; that present Finnish legislation did not secure the Sami's rights to land, water and natural resources or their right to traditional livelihoods; that it was necessary to study the possibility of extending the application of the Act on the Partition of Waters to include the Sami communities; that Finland had not yet ratified ILO Convention No. 169 and that consideration should be given to removing legal obstacles to doing so; and that measures needed to be taken to combat racist anti-Sami movements.

40. Discrimination against the Roma population continued to be a burning problem. Such discrimination was particularly acute in housing and employment, blatant cases having been denounced which required a thorough investigation and the adoption of urgent measures to prevent and eliminate such practices. Consideration should be given to integrating Sami and Roma in the police forces. He also noted the lack of administrative institutions for the Sami and Roma population groups. The educational level of the Roma population must be improved.

41. As to the persistence of racist groups, the Finnish Government acknowledged that there were ultranationalist and racist groups in Finland but did not believe that it was necessary to ban them; it was therefore necessary to reiterate the Committee's recommendation that the Finnish Government should review its compliance with the provisions of article 4 of the Convention; that would also require a number of legislative amendments. The unemployment level was not unrelated to the growth of such racist groups, since the Finns thought that the presence of foreigners was prejudicial to their own employment chances.

42. The policy of classifying as "safe" certain countries of origin of foreigners in general and asylum seekers in particular, a practice which in most cases could prove very subjective, should be halted.

43. The Committee was pleased that Finland was giving greater attention to publicizing its periodic report and the Committee's concluding observations and recommendations. It was to be hoped that it would continue doing so, particularly in the languages of the Sami population, and collect any comments to which they gave rise.

44. Mr. BANTON said that the racial situation in many respects resembled that found in many other Western European countries, whose policies could be summed up as being too little, too late: an explanation was that effective legislation prohibiting racial discrimination could lose political parties votes. The only response to that attitude was better public education, in particular by investigations, such as those promoted by the International Labour Organization into incidents of discrimination in employment. He therefore welcomed the information provided by the Finnish delegation on research in progress, which had an important role to play in encouraging more progressive government action.

45. Most supporting States tended to focus on what their Governments had been doing, whereas the Convention concentrated on protecting potential victims. The Committee was interested in seeing how each of the rights set out in the Convention was implemented in practice, an area in which NGOs could be of invaluable assistance. It was gratifying to note that for the second time the Committee had received a highly professional "shadow" report from the Finnish League for Human Rights on the situation in Finland.

46. On the implementation of article 4, paragraph 148 stated that punishment could be imposed for discrimination against a population group. Although he understood the sentiment behind that paragraph, it would be more persuasive if actual examples could be given of punishment that had been imposed for such acts. He was surprised to learn that in 1997 the Ministry of Justice had ordered the public prosecutors to bring charges against a reporter, and that prosecutors did not have the right to take such steps on their own initiative. A reference had also been made to the courts having an increased power of punishment where offences were racially motivated. If that meant that prison sentences had become mandatory for such offences, then Finland was coming more into line with the practice in a number of other countries in Europe.

47. According to paragraph 164, the police were under an obligation to record any instances of racially or ethnically motivated acts against a member of a minority group. That did not mean that they actually did so. In that connection, the report by the Finnish League for Human Rights stated that only 10 per cent of immigrants having experienced racial discrimination had reported those incidents to the police (page 7). That tallied with similar data in other European countries and was an indication of the magnitude of the problem. Before long, priority would have to be given to the recruitment of members of ethnic minorities by the police and the armed forces. Steps currently being taken in Norway might serve as an example, and Finland might also profit from some of the sad lessons learned in his own country.

48. Regarding the question of the Sami, paragraph 61 gave the Sami population in 1995 as about 7,000. Presumably that had been the total population, and not the number of persons of Sami origin on the electoral register. It needed to be borne in mind that there were nearly as many Sami living in urban areas as in the north; not all were reindeer breeders and many were leading lives which were outwardly indistinguishable from the ethnic majority. Regarding reindeer herders, the report of the Finnish League for Human Rights (page 13) referred to a road which was to be built through the middle of the Lemmenjoki National Park which would be detrimental to their interests. When a decision to construct such a road was taken, what were the procedures whereby the decision-makers were able to strike a balance between the interests of reindeer herders and those of other groups? Was there any provision for paying compensation to groups which suffered damage arising from such construction?

49. Mr. van BOVEN regretted that the report of the Finnish League for Human Rights had reached the Committee so late, making it difficult to give it all the attention it deserved. He also wondered whether it was not incomplete, since it only went up to article 4.

50. Having reviewed the fourteenth periodic report of Finland in the light of the Committee's 1996 concluding observations, he was pleased that the observations had been systematically addressed, although in certain instances the Finnish Government had pursued an approach different from the one recommended by the Committee. Although very comprehensive, the report might have provided more examples of case law in addition to the ones given in paragraph 281.

51. Concerning article 6 of the Convention, what kind of compensation was awarded to a person who had been the victim of racial discrimination? Had there been any such awards?

52. The report had been somewhat brief in its treatment of article 3. That provision dealt not only with apartheid, but also segregation patterns or tendencies. The question arose whether any such tendencies had been observed, particularly in residential areas in Finland.

53. Concerning the Roma, who, as the report acknowledged, constituted a disadvantaged group, he thought that affirmative action, i.e. special measures, were needed on their behalf in housing and employment, in keeping with article 2 (2) of the Convention. With regard more specifically to the

right to housing, paragraph 221 of the report stated that the majority of Roma lived in municipal rented flats and that prejudices often made it difficult for Roma to acquire a flat on the open market but that they had succeeded rather well in finding public housing. That circumstance was of relevance to the Convention, which, in article 2 (1) (d), required measures, including legislation, to prohibit and bring to an end racial discrimination by any persons, group or organization - that included private persons or organizations. Was there any legal provision which could be used to combat discrimination by private persons? According to the report of the Finnish League for Human Rights (page 14), Finnish law did not afford effective protection against municipal authorities, which discriminated against Roma persons when renting publicly owned housing. In that connection, it was important to refer to article 2 (1) (c) of the Convention, which required States parties to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which had the effect of creating or perpetuating racial discrimination wherever it existed. Did the Finnish Government have the means of taking corrective action when local communities discriminated against Roma?

54. Turning to article 7 of the Convention, would the Finnish Government provide funding to organizations carrying out activities in the framework of the forthcoming United Nations World Conference against Racism and Racial Discrimination, Xenophobia and Related Intolerance? Finland's most recent contribution to the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination had been in 1985. Although there was no obligation to make contributions to the Fund, any renewed contribution would certainly be welcome.

55. Paragraph 35 of the 1997 report on Finland of the Council of Europe's European Commission against Racism and Intolerance referred to recent reports of racist incidents in Finland, observing that a more overt commitment at the political level would provide a framework for debate and allow the administrative bodies dealing with such problems to develop a coherent and coordinated strategy to tackle them. Could the Finnish delegation comment on that recommendation?

56. Mr. NOBEL said that there was a continuous conflict between Sami interests, occasionally coupled with environmental interests, and the interests of developers and exploiters of mining, forestry, water and other resources and tourist attractions. There should be a legal mechanism to determine whether or not the exploitation of certain assets was necessary and its decisions should be subject to appeal. As matters stood, the politically and legally weaker Sami seemed to be forced to compromise in every dispute. The Nordic legal concept of land ownership was incompatible with the traditional Sami approach to land rights. He therefore encouraged the Finnish authorities to ratify ILO Convention No. 169. He was sure that the problem represented by article 14 of that Convention, which stipulated, inter alia, that the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupied should be recognized, could be overcome with a measure of goodwill. Recent research into the history of the Sami people had shown that the legal basis for their rights was far more solid than had previously been thought. Article 14 of the ILO Convention further stipulated that measures should be taken in appropriate cases to safeguard the

rights of the peoples concerned to use lands not exclusively occupied by them but to which they had traditionally had access for their subsistence and traditional activities. Particular attention in that connection was to be paid to the situation of nomadic peoples and shifting cultivators. The fact that most of the land traditionally occupied or used by the Sami people was State-owned forest should make it easier to find a solution.

57. Mr. GARVALOV, after commending the impressive report and introductory statement, said that Finland believed that section 14 (3) of the Constitution safeguarded the right of the Sami, Roma and other groups to maintain and develop their languages and cultures. However, while the section required that the right of the Sami to use their language before the public authorities should be enforced through an Act of Parliament, it made no mention of the corresponding rights of Roma and other groups.

58. Finland had ratified the European Charter for Regional or Minority Languages and the Council of Europe Framework Convention for the Protection of National Minorities. How did Finland interpret the term "national minority" and what ethnic groups residing in Finland were covered by the Framework Convention? The World Directory of Minorities published by Minority Rights Group International provided detailed statistics for minority groups in Finland, but paragraph 56 of the Finnish report stated that official population statistics did not contain information on minorities. The subsequent paragraphs gave the impression that groups were distinguished mainly in terms of language (Swedish, Russian, etc.), although they were also of different ethnic origin from the Finns. Did Finland recognize the separate ethnic origin of those groups in the context of the Framework Convention?

59. The use of the terms "foreigners", "aliens", "immigrants" and "refugees" gave rise to some confusion. The Russian-speaking population, which constituted the second largest "linguistic minority", comprised eighteenth-century Russian settlers, Russian citizens and citizens of the former Soviet Union, including Estonians. How many were categorized as foreigners, aliens, refugees or immigrants and on what basis?

60. Table 2 in paragraph 71 of the report listed Finland's population by mother tongue and gender. He wondered why the 24 non-Finnish language groups had not been listed according to ethnic origin. Which body was responsible for attending to their interests: the Ombudsman for Aliens or the Advisory Board for Refugee and Migrant Affairs? According to paragraph 32, the Ombudsman for Aliens was not responsible for national minorities. Again, the question of who constituted a national minority arose. Section 14 (3) of the Constitution described the Sami as an indigenous people and paragraph 77 of the report referred to them as an indigenous people and a national, ethnic and linguistic minority. The delegation in its introductory statement had used the term "traditional minorities" and appeared to draw a distinction between such minorities and immigrants, the Sami as the sole indigenous people, the Roma, the Tatars, the Old Russians and the Jews.

61. According to paragraph 147 of the report, loosely organized ultranationalist and racist action groups existed in Finland, but they were not "significant" organizations or political parties and were not even

registered in many cases. Article 4 of the Convention did not distinguish between significant and insignificant or between registered and unregistered racist groups. All such groups must be declared illegal and prohibited.

62. He congratulated Finland on the impressive action it had taken to implement article 7 of the Convention. Had the authorities assessed the effectiveness of those measures, as recommended in the joint study of article 7 prepared in 1998 by two members of the Committee and two members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities?

63. Mr. de GOUTTES said that Finland's excellent and informative report had been prepared with the participation of not only government ministries but also NGOs, labour organizations and advisory bodies. He commended the practice of referring to the Committee's concluding observations in the headings of the various sections. Finland was one of the 27 States parties that had made the declaration under article 14 and one of the 16 European States that had accepted both the Committee's individual communication procedure and the individual petition procedure of the European Court of Human Rights.

64. Paragraphs 10 to 15 of the report described the provisions of the Penal Code dealing, inter alia, with genocide, ethnic agitation, and discrimination in the provision of services and in recruitment and employment. But, as noted by the Committee during its consideration of the twelfth report and by the Council of Europe Commission against Racism and Intolerance in 1997, racial and ethnic origin were not explicitly mentioned in article 5 of the Constitution. The Penal Code did not recognize as an offence the dissemination of ideas based on racial superiority or hatred, as required by subparagraph 4 (a) of the Convention, and it also failed to prohibit racist organizations and propaganda and to recognize participation in such organizations or activities as an offence punishable by law, as required by subparagraph 4 (b).

65. The report acknowledged that ultranationalist and racist groups existed and he was not fully convinced by the argument in paragraph 148 that it was unnecessary to punish such associations because their leaders and employees could be punished for discrimination and agitation. He was not convinced either by the argument that the banning of an association was inconsistent with the principle of freedom of association or expression. He drew attention to the Committee's General Recommendation XV concerning the interpretation of article 4. He therefore noted with regret that the Finnish Ministerial Group on Good Ethnic Relations had not considered it necessary to act on the Committee's suggestions for legislative reform. On the other hand, he welcomed the intention to replace the Ombudsman for Aliens by an Ombudsman against Ethnic Discrimination.

66. Referring to the bill mentioned in paragraph 152 of the report proposing that racial or ethnic motives should constitute grounds for increasing the severity of the punishment imposed for an offence, and to the delegation's introductory statement that the need to amend the provisions governing sentencing in such cases was being considered, he asked what progress had been made to date.

67. He was struck by the low figures given in paragraph 278 for court proceedings for offences involving discrimination. Moreover, those found guilty were all sentenced to fines. Although a number of prison sentences had been handed down for assault, the judicial authorities seemed, on the whole, to attach little importance to racist offences. The report of the Commission against Racism and Intolerance had referred to the ongoing difficulties encountered by victims who wished to take legal action against such offences.

68. Mr. YUTZIS said he had been pleasantly surprised by the frank and self-critical approach adopted in the Finnish report. Some of the issues it raised were difficult to address because of a range of complicating factors. An indigenous people such as the Sami would find it extremely difficult to preserve its cultural autonomy unless it owned the land on which it lived. The Sami's cultural identity was based not only on history and language but also on their natural and physical environment. The report provided an insight into the conflicts of interest involved. As reported in paragraph 80, a group of Finnish citizens had distributed 10,000 copies of a magazine opposing Sami cultural autonomy. He welcomed the recent rejection of the broader definition of a Sami advocated by that group. In the so-called global economy, profitable investment prevailed over ethnic rights. Ethnic groups without economic and financial clout could only defend themselves through self-advocacy, State assistance and the solid legal backing provided, for example, by ILO Convention No. 169.

69. According to paragraph 64 of the report, an unregistered number of Roma had arrived in Finland in recent years as refugees. How could the authorities tell that the new arrivals were refugees if they were not registered?

70. He noted with regret that, according to paragraph 93, no Roma candidate had been elected to Parliament or to municipal councils.

71. He had received information to the effect that the authorities withheld the passports of persons awaiting a decision on an application for residence, thereby depriving them of their freedom of movement. He asked the delegation to comment.

72. With regard to immigration and refugee policy, he welcomed Finland's decision to abandon the listing of safe countries of origin and replace it by a list of safe countries of asylum. He wished to know which countries had been listed formerly. According to the last sentence of paragraph 122, chain deportations were to be avoided when the new list was applied. Did that mean that chain deportations were permissible pending the application of the new list?

The meeting rose at 6 p.m.